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THE Mining Laws of Mexico

CONTAINING A TRANSLATION OF THE MINING
LAW AND REGULATIONS AND OF THE MINING
TAX LAW AND REGULATIONS; WITH AN
INTRODUCTION, COMMENTARY, CROSS
REFERENCES AND ALPHABETICAL
INDEX.

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PREFACE.

This handbook on the Mining Laws of Mexico has been prepared in the hope that it may prove of practical value to all those interested in the mining business in Mexico. The aim has been to furnish a translation, idiomatically and technically correct, of the different Mining Laws and Regulations, with such ample commentary in the form of an introduction, foot-notes and references, all alphabetically indexed, as will enable the reader to interpret the law intelligently. The authors will be glad to receive communications pointing out passages which may seem to require elucidation or correction, whether in the text of the Laws and Regulations or in the commentary and references.

Acknowledgments are due to Mr. Leon Dominian, mining engineer of this city, for valuable assistance rendered in the translation of mining terms and phrases.

January 1, 1910.

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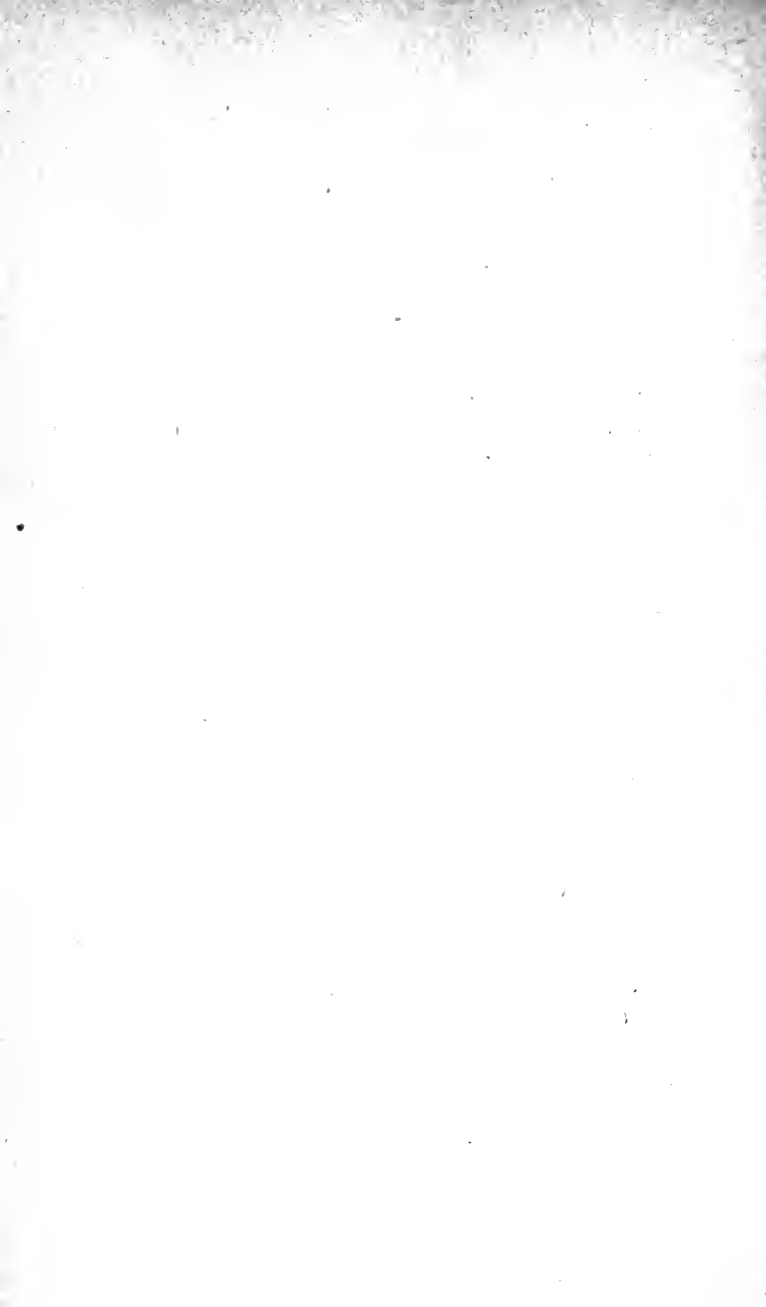


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PART ONE.

INTRODUCTION.

CHAPTER I.

GENERAL PRINCIPLES.

FEDERAL OWNERSHIP OF MINERAL DEPOSITS.

In Mexico, deposits of most of the mineral substances are owned originally by the Federal Government, representing the Nation (1). This is true of minerals existing in private ground, as well as of those found in the public domain. All such deposits, wherever they lie, are the property of the Nation until granted under a Federal patent or title (2). Accordingly, the fee-simple owner of the soil may not extract ores therefrom except under a mineral grant from the central government; and conversely, a stranger may denounce, secure the title to, and mine the ore deposits existing in private ground, regardless of the owner of the latter. The law does not accord the owner even a preferred right in the denouncement of mines in his own property, the freehold in the mines being, for all purposes, distinct and permanently separated from the freehold in the soil (3). The old maxim of the English Common Law, "*Cujus est solum, hujus est usque ad caelum et usque*"

1.—Art. 1 of the Mining Law.

2.—Art. 11.

3.—Arts. 7, 10 and 102.

INTRODUCTION

ad infernos." finds no place in the mining laws of Mexico (4).

Once the mineral patent or title is issued, the grantee acquires what is known to the Common Law as a base, qualified, or determinable fee in the deposits. In plain language he is the absolute owner of the mining grant so long as the mining tax is paid punctually. The Nation, on the other hand, is the direct owner of all mineral deposits until actually granted; and upon grant, retains therein a contingent reversionary interest, conditioned upon a failure at any time to pay the mining tax (5).

The Mexican Government does not operate any mines; but leaves their development entirely to private enterprise, subject only to a reasonable police supervision. In a word, ungranted mineral deposits are in the hands of the Federal Power, but subject to acquisition by private parties.

MINERAL DEPOSITS SUBJECT TO THE LAW.

The law determines explicitly which classes of mineral substances belong to the Nation, and which to the owner of the soil. The division is of importance, since the deposits belonging to the Nation may be worked only by virtue of a Federal grant; whereas the deposits belonging to the owner of the soil may be worked freely without need of any government grant (6).

The substances which lie in the grant of the Federal Power are all deposits of inorganic substances found in veins or masses the formation of which is separate and distinct from that of the

4.—"The proprietor of the soil owns it upward to the sky and downward to the lowest depths."

5.—Art. 51.

6.—Arts 1 and 2.

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country rock. Such substances include the metals, such as gold, silver, lead, copper, etc; the precious stones; sulphur, arsenic and tellurium; and rock salt. To these deposits must be added placers of gold and platinum (7).

The substances which belong to the owner of the soil embrace deposits of the mineral combustibles, such as coal and oil, of bituminous substances, and of surface salts; the country rock and substances of the soil, such as slate, limestone, etc.; bog iron and loose surface deposits of iron and tin; and the ochres (8).

The Mining Law does not apply to the substances enumerated in the second division. Except in the case of coal mines (9), their exploitation is not subject even to the police provisions of the Mining Law or its Regulations, but only to the prescriptions of the local State Laws or municipal ordinances.

THE MINERAL GRANT.

The mineral grant, or mining property, as it is called in the Law (10), is procured from the Federal Government by means of a denouncement and the subsequent issue of title (11). Any person, except as stated hereinafter (12), may apply for and secure a mineral grant. The title is issued to the first applicant. The Law gives no preference to the discoverer of the mine, nor to the first occupant, nor to the owner of the soil. Priority of

7.—Art. 1.

8.—Art. 2.

9.—Art 133.

10.—Art. 5.

11.—Art. 11.

12.—See under "Foreigners" of this introduction.

INTRODUCTION.

application, with issue of title and due registration thereof, alone gives priority of right (13).

It should be noted, however, that the Government does not guarantee that the title issued will be effective and incontestable. The grant is made always without prejudice to the existing rights of third parties. Unfortunately, it sometimes happens that the true boundaries of two different grants overlap. In such an event, the title-deed bearing the prior date vests the ownership of the minerals in the ground in dispute, provided that such title-deed has been registered in accordance with the Law (14).

There is no limit set by the Law to the possible size of a mining grant. The applicant may denounce as large a tract as he desires. The initial tax, however, on every hectare (2.471 acres) is five pesos (15); and the annual tax thereafter is six pesos a hectare on the first twenty-five, and three pesos a hectare on the excess, provided that, where the number of hectares exceeds twenty-five, the property is in one piece (16).

A mineral grant vests the ownership of the ores contained therein; but no title whatsoever to the ground as such (17). The freehold in the mineral deposits is severed absolutely and permanently from the freehold in the soil. Even when the two estates are united in the same person, no legal fusion takes place, but each is held under and by virtue of a distinct title. The Law provides for the creation of the easements, and the

13.—Arts 11, 12, 21, 27, 82, 83 and 86.

14.—Arts. 49 and 86.

15.—A peso is the equivalent of fifty cents in United States currency or two shillings in English currency.

16.—See Mining Tax Law, Part Four of this Book.

17.—Art. 7.

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expropriation of the property, needed to enable the miner to exploit the mineral deposits to the best advantage (18). The use and enjoyment of the waters existing in mineral ground belong to the owner of the mining property (19).

Under the Mexican law, a miner may not cross the vertical planes of his grant. His mining operations must be confined strictly within his boundary lines drawn downwards perpendicularly, the Law recognizing no sub-surface extralateral rights. The "apex rule" of United States mining practice is unknown here, and accordingly, under no circumstances may a miner follow a lode outside the vertical planes of his property (20).

A mining property is subject to forfeiture only for non-payment of the mining tax. No annual assessment, or representation work, is required. Subject to the Police Regulations governing mines, a miner may work his mineral deposits as he sees fit; or he may defer all work indefinitely. Punctual payment of the mining tax is his sole condition of tenure (21).

THE PERTENENCIA.

Under the Mexican laws, the pertenencia is the unit both of mining location and of measurement (22). All denouncements must be reduced to pertenencias, and the pertenencia itself is for all legal and fiscal purposes an indivisible unit (23). A mining property, as it is called by the Law, may

18.—See under "Easements and Expropriations" of this Introduction.

19.—Art. 9.

20.—Arts 4 and 8.

21.—Art. 51.

22.—Art. 4.

23.—Art. 7.

INTRODUCTION

consist of one or of any number of contiguous *pertenencias* (24.)

The surface of a *pertenencia* is a horizontal square, and measures one hectare, that is 10,000 square meters or 2.471 acres. The vertical planes of the *pertenencia* are drawn perpendicularly to the horizon and run downward indefinitely. To cross those vertical planes and enter either the grant of a stranger or free ground, is a trespass. As already indicated, there is no "apex rule" in Mexican law (25).

Where it is physically impossible to reduce the grant to square *pertenencias*, i. e., to horizontal squares measuring one hundred meters to the side, the irreducible residue is called a *demasía*, and is deemed to consist of as many *pertenencias* as there are hectares contained in its surface (26).

EASEMENTS AND EXPROPRIATIONS.

The mining industry in Mexico is one of the mainstays of the Federal Treasury and of the people at large. For this, among other reasons, the law regards mining enterprises of the minerals embraced by the Law as public utilities, and subordinates the rights of the landowner to the needs of the miner (27). While it is true, as already indicated, that a mineral grant embraces only the deposits of ore, and not the ground itself, the Law provides that the miner shall be afforded every facility for the development or operation of his mines. This is accomplished by the creation of easements and the expropriation of ground.

24.—Arts. 5 and 19.

25.—Art. 8.

26.—Art. 6.

27.—Art. 10.

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In general it may be said that the miner may secure the creation of whatever easements, and the condemnation of whatever ground are needed for the full enjoyment and development of his mining property. Indeed, certain easements and expropriations are indispensable to the operation of the mine, unless the miner is able to lease or purchase the surface ground. Without an easement of passage, for instance, a miner would have no lawful means of access to his property; and without the expropriation in his favor of a certain portion of the surface ground, the extraction of ore would be a physical impossibility.

In its practical effect, the creation of an easement is a form of expropriation; but, strictly speaking, the easement gives only a certain use of a stranger's ground, whereas expropriation transfers the title in the ground itself. The Mining Law permits of the creation of mining easements either in the surface ground of the mineral grant in whose interest they are created, or in adjoining properties, whether mineral or non-mineral. On the other hand, expropriation is permitted only within the surface boundaries of the grant, except in the case of railroad construction. In one form or another, however, the miner can secure the use or occupation of all the ground he needs, both surface and subsurface, either as above indicated or by the denouncement of adjacent mineral ground (28).

Before a legal or compulsory right of easement can be enjoyed, or ground subject to expropriation can be occupied, two conditions must be fulfilled: first, there must be a decision, either

28.—Arts 61 to 78 and 87 to 96.

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provisional or final, of some competent authority, declaring such easement or expropriation necessary; and secondly, compensation must be made to the owner of the property subjected to the easement or the expropriation, as the case may be, or the estimated indemnity placed in deposit, where the creation of the easement or expropriation is provisional. Until these prerequisites are complied with, the right of easement or expropriation is dormant and cannot lawfully be exercised. Mining easements cannot be created by user or by prescription (29).

Legal, that is, obligatory mining easements are of two kinds: those imposed upon non-mining properties, and those imposed upon one mining property in favor of another. Obligatory easements in non-mining property are of passage, drainage, aqueduct, ventilation or transmission of electric power. Those created in one mining property in favor of another are either of drainage or of ventilation. The foregoing enumeration exhausts the different classes of easements the formal creation of which may be compelled by the miner; but by agreement, of course, any form of voluntary easement may be created (30).

The miner can secure the expropriation of whatever surface ground, lying within the boundaries of his grant, he may need for the effective appropriation of the mineral deposits, whether surface or subsurface, as also for the machinery, railroad tracks, buildings and other accessories of the mining operations; likewise of the ground required for the installation of reduction works of whatsoever character, provided that the ore to be

29.—Arts. 71 to 78 and 88 to 95.

30.—Art. 61.

GENERAL PRINCIPLES.

treated therein is extracted from the grant on which such works are erected, or from other grants owned by the same person and operated by the same concern (31). Ground expropriated ostensibly for certain uses is subject to recovery by its former owner if devoted to other uses; and, on the same principle, if a grant is forfeited, the ground expropriated is in like manner subject to recovery (32).

ADMINISTRATIVE AND JUDICIAL JURISDICTION.

Jurisdiction in mining matters is vested in the Department of Fomento and in the courts.

Administrative cognizance of mining matters is placed with Fomento. This Department exists for the purpose of promoting and encouraging the development of mining, agriculture, and other industries. The general principle of the Law is that the decisions of the Department in mining matters shall be provisional only, being finally determinable by the courts if either party so desires. By the consent of both parties in the controversy, however, the Department may be given exclusive jurisdiction and its decision is then definitive. In the granting of mining titles, the creation of compulsory mining easements, and the expropriation of ground for mining uses, the Department has exclusive initial jurisdiction; and its decisions regarding these matters are operative and effective unless and until reversed by the courts (33).

The Department is vested with authority to inspect all mines subject to the Mining Law; and

31.—Art. 87.

32.—Art. 96.

33.—Arts 11, 72 to 78 and 88 to 95.

INTRODUCTION.

may, if it finds that a failure to comply with the Regulations is endangering the lives of the miners, suspend the operations (34).

All the administrative departments in Mexico are vested with a quasi-judicial cognizance of minor offenses (35). The Department of Fomento may punish certain breaches of the Mining Law or Regulations with detention up to one month or fine up to five hundred pesos (36). Its decisions in such cases are virtually final, although subject to inquiry at the instance of party under the "amparo" proceedings referred to below. The courts, however, are indisposed to impugn any sentence of an Administrative Department of the Federation.

As between the Federal and the State courts, judicial competency is determined by the following rule: If the case arises under a Federal law, the Federal courts have exclusive jurisdiction, except where private interests only are involved. In other words, unless the Nation has an interest in the suit, it is tried in the State courts. It will be noted that, under the Mexican practice, neither the origin of the law applicable nor the diverse citizenship of the parties, determines the question of jurisdiction (37). But if a State judge fails to apply the law correctly, whether such law be State or Federal, the courts of the Federation may be appealed to for Constitutional protection, under the proceeding termed an "amparo." The Constitution of the Republic guarantees to all persons the exact application of the laws, both

34.—Arts 126 to 132.

35.—Art. 21 of the Mexican Constitution.

36.—Art. 101.

37.—Art. 107 of the Law and Art. 97 of the Mexican Constitution.

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State and Federal (38). Under the provisions of the new Law, most mining causes are triable exclusively in the Federal courts (39).

FOREIGNERS.

The mining laws of Mexico do not discriminate against the foreigner, except as indicated below. A foreign company, partnership or individual may conduct explorations, denounce mines and obtain mineral grants, under the same terms and conditions as a Mexican citizen. To enjoy these privileges, not even residence in the republic is necessary, since both the denouncement may be made and the title secured through a properly accredited representative (40).

Within a zone of eighty kilometers, approximately fifty miles, along the frontier, however, the new Law materially restricts the rights of the foreigner (41). If an individual, he may indeed denounce mines in the zone, but in order to obtain a title under which to work them, or to acquire permanent property rights in mines so located, or mortgages thereon, he must first secure a permit from the President of the Republic (42). In the case of foreign companies, these cannot either denounce or permanently acquire, by any means whatsoever, mining lands or mortgages thereon within the zone indicated (43). For all legal purposes, in the cases above indicated, a lease to a foreigner for a period exceeding ten years will no doubt be regarded as a transfer of

38.—Art. 14 of the Mexican Constitution as amended.

39.—Arts. 107 and 123.

40.—Arts. 20 and 49.

41.—Arts. 136 to 144.

42.—Arts. 136 to 138.

43.—Art. 139.

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ownership (44). Where mining property in the zone is acquired by a foreigner by inheritance or will, or by virtue of judgment for debt, such property must be disposed of within one year, unless, in the case of an individual, the permit above referred to is obtained (45). These provisions relative to the frontier zone do not affect vested interests, that is, existing titles, leases or mortgages to or on mines. They do, however, govern applications for mineral grants which have not been finally approved by the Department before January 1, 1910 (46). There is nothing in the Law to prevent foreigners, even though residing outside the Republic, from incorporating under the laws of Mexico for the purpose of owning, developing or operating mines in the frontier zone (47).

In conclusion it may be noted that documents executed abroad and relating to such mining transactions as require registration under the Mexican laws, are not effective as against third parties until so registered (48).

MINING COMPANIES AND PARTNERSHIPS.

Individuals may combine in any form of partnership or company for the operation of mining properties (49). In practice such combinations here usually take one of two forms: either that of a loosely organized partnership or company, termed a Provisional Association ("asociacion momentá-

44.—Art. 31 of the Law Relating to Foreigners. ("Ley de Extranjería.")

45.—141 to 143.

46.—Art. 3 of the Transitory Articles of the Law.

47.—See also below.

48.—Art. 86.

49.—Art. 79.

GENERAL PRINCIPLES.

nea"); or that of the formally constituted Corporation ("sociedad anonima").

THE PROVISIONAL ASSOCIATION.

The Association requires for its formation no formalities of any kind and no expenditure of money. The terms of the agreement to combine need not even be reduced to writing, although this precaution should be taken if for no other reason than to secure certainty and permanency of understanding. The chief disadvantage of operating under this form of combination, however, is that the agreement of Association is effective only as between the parties thereto, and not as regards third parties. For instance, such an agreement will not operate to vest in the Association the title to mines to be worked under its terms. An Association has no legal existence apart from that of the associates. It is not a legal entity. The liability of the associates for debts incurred is not limited, as it is in the case of stockholders in corporations. The Provisional Association, as its name implies, is an appropriate form of combination as a temporary expedient, or where the interests involved do not, for the moment at least, warrant the trouble and expense of incorporation (50).

THE DOMESTIC CORPORATION.

Corporations to engage in mining enterprises may be formed in México under much the same conditions as in the United States and England. The salient features of the Mexican incorporation laws are as follows: Companies organized thereunder are

50.—Arts. 92, 98, 99 and 268 to 271, all of the Commercial Code.

INTRODUCTION.

Federal and have legal standing throughout the Republic; the articles of incorporation are drawn up in the form of a notarial deed and registered, without need of any further formalities; stockholders are liable, unless otherwise provided, only to the extent of their unpaid subscriptions; the stock may be common, preferred or bonded; free stock may be issued in exchange for services rendered or for property; all the stock must be subscribed at the time of incorporation; but only ten per centum of the cash capital need be paid in at that time; provision may be made in the articles of incorporation or the statutes for the purchase by a company of its own stock, or of stock in other companies, as also for the sale of all the corporate assets; consolidation with other companies is allowed; the incorporators of mining enterprises may set any value on the company assets, without danger of liability (51); there are no residential or citizenship requirements of incorporators, stockholders or directors; the meetings of directors and of stockholders must be held at the domicile of the company, but advisory committees may be appointed outside the corporation domicile and vested with executive and administrative powers; the stockholders have no extrajudicial right to inspect the books of the company, except through an officer of the same, the Commissary, who acts as their representative; but by judicial process the production of books may be compelled at any time; certain annual reports of a formal character are required, but there exists no government supervision of mining corporations as such; the commercial and other

51.—Art. 80 of the Mining Law.

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books of the company must be kept here and in the Spanish language, but a separate set of books in the English language may be kept elsewhere; any amendment of the articles of incorporation is a simple formality, given the voting majority stipulated in the said articles (52).

The principal incidental expense of incorporation consists in the initial stamp tax on the notarial deed. This is based on a sliding scale, and may be estimated approximately from the following examples: on ten thousand pesos the tax is ten pesos; on one hundred thousand pesos, one hundred pesos; on a million pesos, seven hundred and fifty pesos; on five million pesos, eleven hundred and fifty pesos (53). There is also a stamp tax of one per mill, approximately, on the stock certificates (54). Aside from attorney's fees the other expenses consist of notarial dues, which run from about one hundred to three hundred pesos, depending chiefly upon the amount of the capitalization. A peso is the equivalent of fifty cents in United States currency and of two shillings in English currency. There is no annual tax on corporations as such; they pay like individuals a tax on property and operation.

THE FOREIGN CORPORATION.

Companies incorporated under the laws of a foreign country are on the same footing as domestic corporations regarding the acquisition and opera-

52.—Arts. 89 to 97, 163 to 225, and 260 to 264, all of the Commercial Code.

53.—Federal Stamp-Revenue Law, Sec. 96 of the Tariff.

54.—Federal Stamp-Revenue Law, Sec. I of the Tariff.

INTRODUCTION.

tion of mines in the Republic, except within a zone of eighty kilometers along the frontier (55); but to do business with safety, they must be protocolized and registered here (56). The taxes and incidental expenses of protocolization and registration are somewhat less than for original incorporation under the Mexican law (57).

THE LAWS RELATIVE TO MINING MATTERS.

Under the Mexican Constitution the Congress is empowered to issue mining codes operative throughout the Republic (58). All mining legislation is therefore of Federal origin. The new code (59), enacted in November of 1909, and effective after January 1, 1910 (60), expressly provides for the repeal, as from the last date named, of the code of 1892, and of all other laws, decrees and rulings in regard to mining in force at the time the new Law and Regulations go into effect, except those of a fiscal character (61).

It should be noted that, in addition to the Mining Law proper, there exist also the Mining Tax Law, Regulations and Circulars (62), treating of the Federal taxation of mining properties, which have been left substantially unmodified by the new law (63). Furthermore the new General

55.—See above.

56.—Arts. 15, 24 and 265 to 267, all of the Commercial Code.

57.—Federal Stamp-Revenue Law, Sec. 89 of the Tariff.

58.—Art. 72, Sec. X, of the Mexican Constitution.

59.—Mining Law of the United States of Mexico of 1909.

60.—Art. 1 of the Transitory Articles of the Law.

61.—Art. 9 of the Transitory Articles of the Law.

62.—Mining Tax Law and Regulations of 1892: Part Four hereof.

63.—Art. 9 of the Transitory Articles of the Law.

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Mining Regulations (64) and Police Mining Regulations, (65) which are based on and are supplementary to the new code, all have the force of law, and contain a great deal of what, in some countries, would be deemed legislation. From time to time the Departments issue Circulars, interpreting the Laws and Regulations (66).

Where the Mining Law is silent, the Civil Code of the Federal District and the Commercial Code are applicable; and where these are silent, the general principles of the Civil Jurisprudence, as developed in the writings of jurists and the decisions of the Supreme Court, must be consulted (67). In certain mining cases, also, recourse must be had to the provisions of the Penal Code of the Federal District and the Federal Code of Criminal Procedure (68), of the Code of Civil Procedure of the Federal District (69), the Federal Code of Civil Procedure (70), the Code relating to Foreigners (71), the Federal Stamp Law and Circulars (72), the Federal legislation in force regarding Lands, Waters, and allied subjects, and the Codes and Laws of the different States and Territories (73).

64.—See Part III of this Book.

65.—To be issued early in 1910.

66.—All past circulars relating to the Mining Law proper have been withdrawn. Future editions of this book will contain such fresh Regulations and Circulars as have been issued at date of publication.

67.—Arts. 3, 77 and 79 of the Law.

68.—The Penal Code of the Federal District of 1872 and the Federal Code of Criminal Procedure of 1909. Art. 97 of the Law.

69.—Code of 1884.

70.—Code of 1909.

71.—Code of 1886.

72.—Law of 1906.

73.—Art. 123 of the Law.

CHAPTER II.

HOW TO OBTAIN A MINERAL GRANT.

If the reader is familiar with the general principles underlying the mining laws of Mexico, as set forth above, he will have but little difficulty in comprehending the procedure to be followed in acquiring original title to a mineral grant. It will be understood, of course, that what follows refers only to the acquisition of the classes of mineral deposits which lie in the grant of the Government, and not to those belonging to the owner of the soil. The subject may conveniently be considered under three heads: Prospecting, Denouncement, and Registration of Title.

PROSPECTING.—The Federal Government is directly interested in the discovery of the hidden treasures it owns. Accordingly, the law provides that the prospector shall be afforded every reasonable facility in his search for ore, the foreigner being granted the same rights and privileges in this respect as the Mexican. With certain restrictions, which will be indicated later, the prospector may explore both in the public domain and in private ground; but, to avoid trouble, he must comply strictly with the law in securing the permission required, as explained hereafter.

Under the new law the area of exploration is limited. Its maximum size is determined by taking a central point and running a circle around it with a radius of 500 meters. The maximum breadth of the exploration tract will be, therefore, one thousand meters. (1)

If the ground which it is desired to explore is public land, the prospector will file an application in duplicate with the local representative of the Mining Bureau, called the Mining Agent, designating clearly the zone to be explored. To the application must be attached a certificate signed by a graduate surveyor, to the effect that no mining operations have previously been undertaken in the

1. Art. 124 I of the Mining Law.

HOW TO OBTAIN A MINERAL GRANT.

ground and that it lies at least two hundred meters from the nearest mining property under title. (2)

If the ground to be prospected is private land, application is first made to the owner; and if the permit is secured, the Mining Agent must be so informed by the prospector. (3)

Where the owner of the ground refuses to grant the permission required, application is made to the Mining Agent. In such cases the applicant must give bond to cover any loss or damage which might result to the property as a result of the prospecting. (4)

The term of the exploration permit is limited in all cases to sixty days. The law does not allow any extension of this term; and upon its expiration, no second permit covering the same ground or part thereof is procurable until after the lapse of six months. This provision of the law is designed to prevent the tying-up indefinitely of valuable zones of property by means of successive exploration permits. (5)

Exploration permits will not be issued in ground where mining, as distinguished from prospecting, operations have already been conducted; nor in ground lying within two hundred meters of a mining property under title; nor within the precincts of inhabited places. Prospecting near public or private buildings and railroads is expressly prohibited. (6)

It should be noted especially that a prospector who complies with the provisions of the Law and Regulations in regard to exploration permits has the exclusive right, during the life of the permit, to denounce (that is, apply for a mining title to) ground lying within the zone of exploration. (7) The advisability of complying with the law is, therefore, obvious. The fees to be paid amount to only a few pesos. (8)

DENOUNCEMENT.—By the phrase “denouncement of a mine” is meant the filing of an application for a mining grant. In a general way it may be said that “denouncement” in Mexico is the equivalent of “locating a

2. Art. 124 (Secs. III and VIII) of the Law and Art. 53 of the General Regulations.

3. Art. 124 II of the Law and Art. 54 of the Regulations.

4. Art. 124 of the Law and Art. 55 of the Regulations.

5. Art. 124, Secs. IV and VI of the Law and Art. 56 of the Regulations.

6. Art. 124, Secs. VIII and IX of the Law.

7. Art. 124, V, of the Law.

8. Art. 1 of the Tariff of Charges appended to the General Regulations.

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claim" in the United States, except that the legal requisites and procedure are entirely different in the two countries. As already indicated (9), unallotted mineral deposits in Mexico belong to the Federal Government and are granted to the first applicant to hold in fee simple, conditionally upon the regular payment of the annual mining tax. (10) The reader is reminded that the procedure outlined here does not apply to deposits of marble, stone, and other like substances, nor to coal-beds or oil-wells. (11)

The first step in the proceeding of denouncement is to deposit with the Local Stamp Revenue Office five pesos (two and a half dollars in United States currency or ten shillings in English currency) for each pertenencia to be denounced. (12) This deposit will be returned if, for any reason, the title is not finally issued. A duly stamped application (fifty cents a folio) is then filed with the Mining Agent, in duplicate and in Spanish, by the denouncer personally or through a lawful representative, together with the certificate of the stamp office showing the deposit of the amount of the tax above referred to. (13) Below will be found a form of application in Spanish, with translation into English and references to the Law and Regulations. There are no restrictions in regard to the number of pertenencias for which application may be made. As a general rule, the pertenencias applied for in a denouncement must be contiguous; but the law places no limit to the number of denouncements which may be filed by the same person. (14)

If the applicant is a foreigner and, in addition, the mine is situated within eighty kilometers (about fifty miles) of the border, the denouncement is subject to special provisions of the law. (15)

The Mining Agent has no right to refuse to receive and record any application filed, provided it is accompanied by the certificate of tax deposit referred to above. (16)

The day and hour of filing is recorded in the Register of the Agency, and noted on the original and duplicate of the application. The applicant may demand that all

9. The Mineral Grant, page 6.

10. The Mineral Grant, page 6.

11. Art. 2 of the Law.

12. Arts. 16 and 18 of the Law.

13. Arts. 15, 16 and 20 of the Law.

14. Arts. 17 and 19 of the Law.

15. Arts. 136 to 144 of the Law.

16. Art. 21 of the Law.

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these notations be made in his presence. If, at the time of acceptance of the application, the Mining Agent finds it lacking in clearness or precision, the law requires him to give the applicant an opportunity to make the necessary explanations, which latter are also entered in the Register and noted upon the original and duplicate of the application. A failure on the part of the applicant to give the explanations asked for does not warrant a refusal on the part of the Agent to accept and record the application. (17)

Within three days after the acceptance and recording of the application, the Mining Agent determines whether it is to be admitted or rejected. The greatest care should be exercised by the applicant in following out all the legal requirements relative to the denouncement, since a failure to comply with the law in this respect will cause his application to be denied admission or to suffer rejection by the Department upon review. (18)

The Regulations direct the Agent to appoint, for the survey of the ground denounced, the surveyor proposed by the applicant, provided he is eligible under the terms of the Regulations. (19) The provisions of the latter in regard to the appointment of the surveyor are detailed and exhaustive. (20) It will sometimes save time and trouble to consult the Agent in regard to the eligibility of the surveyor desired before his formal designation is made by the applicant. The surveyor has no right to depart from the description of the property denounced as it appears in the application. (21) If it is materially impossible for him to survey the tract as described, the application will be rejected. Sixty days are allowed the surveyor within which to file his report. (22) The Regulations are explicit in regard to the manner in which the survey and plans are to be made. (23) The surveyor's fees are matter of private arrangement with the party making the denouncement.

The law allows adverse claimants a term of four months, from the date of the admission of the application, within which to file adverse proceedings. The Regulations must be consulted for details in regard to the

17. Arts. 21 and 22 of the Law.

18. Arts. 23, 24 and 28 to 36 of the Law.

19. Art. 7, VIII and 18 of the Regulations.

20. Art. 25 of the Law and references thereunder to the Regulations.

21. Art. 59 of the Law and Art. 28 of the Regulations.

22. Art. 21 of the Regulations.

23. Arts. 24 to 29 of the Regulations.

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procedure applicable in such cases. (24) In general it may be said that the Mining Agent is required to do everything in his power to bring the contending parties together and so prevent judicial proceedings. (25) If he fails to procure an agreement, recourse must be had to the Department for a decision of the points at issue, or to the courts if both parties are not willing to submit the matter to the Department for determination (26)

After the lapse of the term of four months allowed for the filing of adverse claims, or upon the determination of the judicial proceedings last referred to, the record is transmitted to the Department of Fomento for review; and if found satisfactory, the applicant is notified that the title will be issued to him as soon as the boundary monuments required by the law are constructed. (27) It takes the Department one or two months, or longer, to revise the application and related papers; so that the total time occupied in securing a mining title is, in ordinary cases, about six months from the date of filing the application.

Aside from the surveyor's charges and the cost of the stamps to be fixed to the title-deed, the expenses involved in obtaining a mineral grant are usually small (28).

FORM OF APPLICATION FOR A MINERAL GRANT.

Señor Agente de Fomento en el Ramo de Minería:

.....^(a), de.....
Nombre del solicitante
años de edad ^(b), con ocupación de.....^(c),
ciudadano.....^(d), con domicilio en
.....^(e), y con habitación en.....
domicilio legal
.....^(e), ante Ud. con el debido
respeto comparezco y digo:

24. Arts. 37 to 44 of the Regulations.

25. Arts. 39 of the Law and same number of the Regulations.

26. Arts. 37 to 45 of the Law and references thereunder the Regulations.

27. Art. 27 of the Law.

28. See Tariff of Charges appended to the Regulations, and especially Arts. 2 and 8 of the same Tariff.

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Que deseo adquirir.....^(f) pertenencias
número
en el lugar conocido con el nombre de.....
....., en terreno libre, de la jurisdicción de
la Municipalidad de....., Distrito de
....., Estado de.....^(g),
que denomino.....; que la localiza-
nombre que se dá al predio minero
ción en el terreno de las pertenencias que aquí se
denuncian, con las indicaciones que sirven para
identificarlas, son como sigue:.....
.....^(h);
que el punto fijo de donde han de partir las medi-
das es.....⁽ⁱ⁾; que las co-
lindancias mineras son las siguientes.....
.....^(j);
que como puntos bien conocidos existentes en las
cercanías de las pertenencias que aquí se denun-
cian, hago mención de los siguientes:.....
.....^(k);
que me propongo explotar principalmente meta-
les de.....^(l).
sus nombres
que acompaño el certificado del depósito constitui-
do en la Administración del Timbre en.....
.....por valor de
lugar de la Administración
las estampillas que deben adherirse al título ^(m); y
que propongo al perito.....
su nombre
....., residente en.....,
para practicar las medidas y levantar el plano co-
rrespondiente.

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Por lo tanto á Ud. suplico se sirva registrar esta mi solicitud, la cual presento por duplicado ^(o) y debidamente timbrada ^(p), y se sirva Ud. tramitar la misma en los términos que prescribe la Ley.

.....
lugar y fecha.

..... ^(q)
firma del denunciante

Translation of form of application for a mineral grant.

To the Agent of Fomento, Bureau of Mines:

I, ^(a),
name of applicant

..... years of age ^(b),
occupation

..... ^(c), citizen ^(d), legally domi-
nationality

ciled at ^(e), and residing at
home, address or city

..... ^(e), before you with
actual place of abode

due respect do appear and state:

HOW TO OBTAIN A MINERAL GRANT.

That I desire to acquire.....

number

.....^(f) pertenencias at the place known as
....., being in free ground, in the
jurisdiction of the Municipality of.....

....., District of.....,

State of....., ^(g) which tract I
hereby name.....; that the loca-

name given to the mineral tract denounced

tion on the ground of the pertenencias herein ap-
plied for, with the indications which serve to
identify the same, are as follows:.....

.....^(h); that the fixed point from which
the measurements are to depart is.....

.....⁽ⁱ⁾; that the adjoining mining pro-
perties are as follows:.....

.....^(j); that the following well known
points lying in the neighborhood of the pertenen-
cias hereby denounced may be mentioned:.....

.....^(k); that I purpose to
mine principally ores of.....^(l),

names of ores

that I file herewith the certificate of the deposit
made in the office of the Administrator of Stamp
Revenues at.....

place where office is located

of the value of the stamps to be attached to the title-
deed ^(m); and that I propose the name of.....

....., residing at.....,

to act as expert surveyor in the making of the
proper survey and related plan ⁽ⁿ⁾.

Wherefore, I pray that you will see fit to record
this my application, which I herewith present in

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duplicate ^(o), and properly stamped ^(p), and to proceed with the same in accordance with the provisions of the Law.

.....
Place and date.

..... ^(q)
Signature of denouncer

- _____
- tions.
- (a) Art. 15 of the Mining Law and Art. 17 of the General Regulations.
 - (b) Art. 15 of the Law.
 - (c) Art. 15 of the Law.
 - (d) Art. 15 and 126 to 144 of the Law.
 - (e) Art. 15 of the Law. The home of the applicant may, of course, be also his actual place of residence.
 - (f) Arts. 15, 17 and 19 of the Law.
 - (g) Art. 15 of the Law.
 - (h) Art. 15 of the Law.
 - (i) Art. 16 of the Regulations.
 - (j) Art. 15 of the Law.
 - (k) Art. 16 of the Regulations.
 - (l) Arts. 7 and 15 of the Law.
 - (m) Arts. 16 and 18 of the Law.
 - (n) Art. 25 of the Law and references thereunder to the Regulations.
 - (o) Art. 15 of the Law.
 - (p) A properly cancelled fifty-cent revenue stamp must be affixed to each sheet of the application
 - (q) Art. 20 of the Law and Art. 17 of the Regulations.

HOW TO OBTAIN A MINERAL GRANT.

REGISTRATION OF TITLE.—Upon receipt of the title deed, it is of the utmost importance to have the same properly recorded in the Register of the Municipality where the mining property is situated. (29) If this is done within thirty days of the date of issue of the title, the registration will be retroactively effective as from such date; otherwise it will be effective only from the actual date of the recording (30). It should be noted that although title is issuable to the first applicant, and that, accordingly, as between applicants, the first denouncement filed, if duly admitted, has priority; still, as between parties each holding a properly issued grant to the same ground, the first deed registered has priority, and is, consequently, the only one vesting good title. It sometimes happens, through fraud or error, that title-deeds are issued to different parties covering the same ground, either in whole or in part. It is to guard against this contingency that the grantee should record his deed within the thirty days allowed by the law (31).

29. Arts. 82 and 83 of the Law.

30. Art. 86 of the Law.

31. Art. 49 of the Law.

CHAPTER III.

INNOVATIONS.

In general, the new Law follows the fundamental principles underlying the Law of 1892. The following is a synopsis of the more important reforms introduced. The references are all to articles of the Law.

CHAPTER I.—

MINING PROPERTY AND ITS ATTRIBUTES.

Complete Federalization of the Law Relative to Mines.—Where the Mining Law is silent, the provisions the Civil Code of the Federal District and of the Commercial Code are applicable, to the exclusion, in general, of the local State laws. Arts. 3, 79 and 123.

Water Rights.—The miner is allowed only the use and enjoyment of waters springing in the mines. Arts. 9 and 70.

CHAPTER II.

ACQUISITION AND FORFEITURE OF MINING PROPERTY.

Defaulting Applicants.—An applicant declared guilty of a default in the course of the denouncement proceedings is debarred, but only for one year thereafter, from again denouncing the same property or any part thereof. Only the commission of a serious breach of the Law of Regulations is regarded as a default. Art. 15 and succeeding articles.

Non-Contiguous Pertenencias.—Under certain circumstances a denouncement may comprise pertenencias which are not contiguous. Art. 19.

Reinstatement of Defective Proceedings.—The Department of Fomento must direct the amendment and reinstatement of defective denouncements where no positive breach of the Law or Regulations has been committed. The Law here merely sanctions an existing practice of the Department. Arts. 29 and 30.

Mining Agents Must Receive all Denouncements.—A Mining Agent may not, under any circumstances, refuse

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to receive a denouncement presented to him. Arts. 21 to 24.

Erection of Monuments.—The monuments showing the true boundary of a mining grant must be properly erected before the mining title will be issued. Art. 27.

Increased Power Vested in the Department to Determine Adverse Claims.—Opposing claims set up in the course of denouncement proceedings may, if the parties so agree, be submitted to the Department for final decision. In the absence of such an agreement, these claims are decided by the courts except as stated below. Arts 37 to 43.

Only adverse claims based on an alleged subsisting title or a prior denouncement cause the suspension of the denouncement proceedings. Art. 43 of the Law.

Where the adverse claim is not based on an alleged subsisting title or a prior denouncement, the title may be issued by the Department without awaiting the result of any judicial proceedings, and the decision of the Department in such a case is virtually final. Art. 43.

In certain cases the Department may, at the time of the revision of the proceedings, take under consideration adverse claims of whatsoever character not set up before the Mining Agent. Art. 44 of the Law.

Mining Grants May be Denied on Grounds of Public Utility.—The Department may decline to issue a mining title on legal grounds of public utility. Art. 50.

CHAP. III.—CORRECTIONS AND DIVISION OF MINING PROPERTIES.

Correction of Locations.—The Department may, at the request of an adjoining proprietor or upon its own initiative, direct that the location of a mining grant be corrected, without prejudice to vested rights or interests. Art. 56.

The Denouncement is the Basis of All Corrections.—The data contained in the denouncement is the basis for all corrections made, whether in the location of the grant or in the title-deed. Art. 59.

Division of Mining Properties.—The division of a mining property to produce legal effects requires the issue of new title deeds. Art. 60.

CHAP. IV.—LEGAL EASEMENTS.

Civil Code of Federal District Made Applicable to Mining Easements.—The Civil Code of the Federal District, and not the local State law, is made applicable in

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all matters relative to mining easements not expressly covered by the Mining Law and Regulations. Arts 62 and 78.

Cable Lines.—The creation of easements for the installation of cable lines and other authorized means of transportation, is sanctioned. Art. 63.

Width of Right of Way.—The right of way created under a compulsory easement may not exceed ten meters, Art. 63.

The Department May Create Easements.—The Department of Fomento may authorize the provisional creation or enlargement of an easement, provided that compensation for all the loss or damage suffered in consequence is guaranteed. Arts. 72 to 78.

CHAP. V.—MINING CONTRACTS.—REGISTRATION.

The Commercial Code Governs Mining Organizations and Contracts.—Any form of company, partnership or association, known to the Commercial Code, may be organized to own, operate or exploit mines, the former prohibitions against the associations known, respectively, as “asociaciones” and “avios” being removed. All mining organizations and contracts for the sale or operation of a mine or its products are governed by the provisions of the Commercial Code. Art. 79.

No mining contract is subject to rescission for inequality of consideration.. Art. 81.

The value placed on mines by the organizers of a mining company is deemed proved for legal purposes. Art. 80.

All Documents Affecting Property Rights in Mines or their operation require registration.—Such documents must be recorded within thirty days of the date of their execution. (Arts. 82 to 86.) Documents requiring registration under the new Law and not already registered, must be recorded to be effective. Art. 6 of the Transitory Articles of the Law.

Mining Options.—Mining options may be recorded and are then absolutely binding and effective against the world for a term of two years from the date of registration. Arts. 82, III and 85.

CHAP. VI.—EXPROPRIATION.

Condemnation of Ground For Mining Uses.—The condemnation of surface ground, if lying within the boundaries of the mining grant, may be procured not only for uses connected with the mining operations prop-

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er, but also for the treatment and the reduction of the ores. Art. 87.

Condemnation for Railroads.—Mine owners may secure the condemnation of ground, both inside and outside their properties for the construction of railroads. Art. 87.

The Provisional Condemnation of Land may be Directed by the Department.—The Department is authorized to declare the provisional expropriation of ground, provided that the value of the condemned property, as determined by the Department, be first deposited with the Treasury Department. Arts. 88 to 96.

Recovery of Expropriated Ground.—Under certain circumstances, the expropriated party may recover the ground condemned. Art. 96.

CHAP. VII.—PENAL PROVISIONS.

Federalization of the Criminal Law Relative to Mining.—The Penal Code of the Federal District is made to govern criminal offenses which involve a breach of the mining laws. Art. 97.

Frauds of Mining Agents and Surveyors.—Provision is made for the punishment of such frauds as criminal offenses. Arts. 98 to 101.

Clandestine Mining.—The carrying on of mining operations without right or title is made a specific criminal offense. Arts 102 and 103.

Robbery of Ores.—The stealing of ores by employees of a mining enterprise is constituted a penal offense triable in the Federal Courts. Art. 104.

Destruction or Removal of Monuments.—The wrongful destruction or removal of mining monuments is explicitly brought within the terms of the Penal Code. Art. 105.

CHAP. VIII.—SUITS.

Jurisdiction of the Federal Courts.—Matters involving the application of a Federal law are tried by the Federal courts, except where only private interests are concerned. Where the interests of the Federation are not concerned the State courts have jurisdiction. Arts. 107 and 123.

The Denouncer is the Party Plaintiff in all Adverse Proceedings.—In all cases where the denouncement is opposed, the party denouncing acts as plaintiff. He has in his favor, however, the presumption that the ground denounced is free. The adverse claimant, on the other hand, may rebut this presumption by the production of his titles or otherwise. Arts 112 and 115.

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Nullity of Title.—Titles are incontestable by the Department after the lapse of three years from date of issue. Art. 116.

The Public Ministry.—The representative of the Public Ministry is made an ex-officio party to all Federal mining suits. Art. 121.

CHAPTER IX.—MISCELLANEOUS PROVISIONS.

Explorations.—All exploration zones under the Law are limited to the area of a circle the diameter of which does not exceed one thousand meters; a circle having a radius of five hundred meters. Permits are procurable for exploration either in private or in public ground. The term of the exploration permit is limited to sixty days, and is not renewable except after a lapse of six months. The permit gives a preferential right of denouncement. No exploration permits are procurable in ground where mining operations have been conducted, nor within two hundred meters of a mining property, nor in populated places. Art. 124.

Departmental Inspection of Mines.—The Department of Fomento is authorized to direct, at any time, the inspection of a mining property, the purpose being to see that the Law and Regulations regarding the invasion of strangers' properties and other matters, are not contravened, and to secure scientific and statistical data. If the lives of the miners are endangered by the mining operations, the suspension of the latter may be directed by the Department. Arts. 126 to 132.

Coal Mines. These are made subject to Federal Police supervision. Art. 133.

Ore-Dumps. These are deemed accessory to the mine of their origin. If their origin is indeterminable, they are subject exclusively to the general or local law. Art. 134.

Ore-Deposits in Federal Waters. The Department of Fomento is authorized to enter into contracts for the private exploitation of metallic substances to be found in waters under Federal jurisdiction. Art. 135.

Foreigners. Within a zone of eighty kilometers along the frontier, foreign individuals cannot acquire mines without a special permit from the President of the Republic. Within the same zone, foreign companies cannot acquire mines at all. Where such property is inherited or received under a judgment for debt, it must be sold within one year, unless, in the case of an individual creditor, the special permit is secured. Arts. 136 to 144.

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Payment of the Mining Tax by a Stranger. A stranger having a legitimate interest in saving a mining property from forfeiture may pay the mining taxes due thereon, and recover the money so paid from the owner of the mine or out of the property itself. His claim is made a first charge on the mine, taking precedence even of registered mortgages. Art. 145.

TRANSITORY ARTICLES.

The New Law is Effective from January 1, 1910. Transitory Article 1.

Pending Denouncements. Denouncements in progress on January 1, 1910, are governed by the new Law. Transitory Article 3.

Stamps on Old Titles. A term of six months is allowed for the validation of titles issued prior to 1892. Transitory Article 5.

Registration of Existing Documents. Documents already in existence which require registration under the new Law must be recorded to be effective as against teihird parts after Jan. 1, 1910. Transitory Article 6.

Erection of Monuments. Monuments not yet erected must be set up within one year from January 1, 1910. Transitory Article 7.

Preferential Denouncement Rights. All laws establishing preferential rights in the denouncement of mines are repealed. Transitory Article 8.

Repeal of Old Laws and Regulations. All existing mining laws and Regulations, except those of a fiscal character, are repealed. Transitory Article 9.

PART TWO.

THE MINING LAW.

CHAPTER I.

MINING PROPERTY AND ITS ATTRIBUTES.

ARTICLE 1.

The following property is owned directly by the Nation and is subject to the provisions of this law:

I. Ore bodies of all inorganic substances which in veins, in blankets, or in masses of whatsoever form, constitute deposits the composition of which is distinct from that of the country rock, such as deposits of gold, platinum, silver, copper, iron, cobalt, nickel, manganese, lead, mercury, tin, chromium, antimony, zinc and bismuth; of sulphur, arsenic and tellurium; of rock-salt; and of precious stones.

II. Placers of gold and platinum.

COMMENTARY.—The statement that deposits of the substances named above are “owned directly” by the Nation is applicable strictly only to such deposits before they are granted under a mining title or patent. The grantee under such a title becomes the true and immediate owner of the deposits, and the State reserves in the same only a contingent reversionary interest, conditioned upon the failure at any time to pay the mining tax. See page 4 of the Introduction, and Art. 51 of the Law.

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ARTICLE 2.

The following are the exclusive property of the owner of the soil:

I. Ore bodies or deposits of mineral combustibles, of whatsoever form or variety.

II. Ore bodies or deposits of bituminous substances.

III. Ore bodies or deposits of salts which outcrop at the surface.

IV. Springs of surface and subterranean waters, subject to the prescriptions of the general law and of the special laws on waters, without prejudice to the provisions of Article 9.

V. The country rock and substances of the soil, such as slate, porphyry, basalt and limestone, and the earths, sands and clays.

VI. Bog and residual iron, alluvial tin, and the ochres.

COMMENTARY.—See Introduction, page 4.

It will be noted that deposits of coal and oil belong to the owner of the soil and may be exploited without need of a Government grant. Where such deposits exist on the national domain, special contracts may be made with the Department of Fomento for their exploitation. The terms of such contracts are governed by the practice of the Department. It frequently happens that the Nation, in making grants of public land, reserves the right to deposits of coal and oil existing in such land.

Coal mines are subject to Federal police supervision. See Art. 133 of the Law.

ARTICLE 3.

The prescriptions of the Civil Code of the Federal District relative to common property and its dismemberments are applicable to the system of mining property, in all matters not expressly covered in this law.

THE MINING LAW.

COMMENTARY.—In the civil law the phrase “property and its dismemberments” includes possession, usufruct, use, habitation, mortgages and the easements. By “common property” is here meant non-mining property.

It should be noted that the provisions of the Civil Code of the Federal District are applicable only in so far as they relate to “property and its dismemberments.” Mining contracts are governed by the provisions of the Commercial Code; and questions of personal status, as distinguished from commercial capacity, and of succession either under a will or upon intestacy, are governed by the local law. It will be necessary, therefore, to make a triple classification. In the first class fall all questions of property and possession. These must be determined in accordance with the second book of the Civil Code of the Federal District, except where covered by the provisions of the Mining Law. In the second class fall commercial acts and contracts, including bankruptcy proceedings involving mines. These are governed by the provisions of the Commercial Code, in the absence of any express provision to the contrary in the Mining Law. In the third class fall questions of personal status and capacity, except commercial capacity, and all questions relative to succession upon death, whether intestate or under a will. These are determined according to the provisions of the local law.

Under the old mining law, the local State or Territorial law was applicable in mining matters where the provisions of the mining law did not expressly cover the case or point involved. In consequence, the law in the case often depended upon the locality of the mine. The purpose of this Article is not only to preclude any possible diversity of jurisprudence in mining cases, but also to federalize the law. The Civil Code referred to is that of 1884. See Arst. 79, 107, and 123 of the law and notes thereunder.

ARTICLE 4.

The unit of mining property is termed a *pertenencia* and is a solid of unlimited depth enclosed in the ground by the four vertical planes corresponding to the projection of a horizontal square each side of which measures one hundred meters.

The mining *pertenencia* is indivisible in respect of all acts and contracts affecting its ownership.

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COMMENTARY.—See Introduction, page 7; also Art. 8 of the Law and note thereunder.

A *pertenencia* covers 2,471 acres.

The verticality referred to in the Article is in relation to the earth's horizon.

For the use of the term "*pertenencia*," see Translator's Note under the following article.

In the interpretation of the second paragraph of this Article the legal property or ownership of a *pertenencia* must be carefully distinguished from the *pertenencia* itself. The *pertenencia* as such is indivisible, but the legal property therein is capable of division. For instance, two or more persons may own jointly one *pertenencia*; and each joint owner may, subject to the right of preemption vested by the law in the other co-owners, sell his share. In such an event the vendee becomes a joint co-owner with the others, and has no right to demand a division or distribution of the *pertenencia* itself. As to the right of preemption referred to above, see Arts. 2843 and 2844 of the Civil Code of the Federal District. In regard to the division of a mining property, see Art. 60 of the Law.

ARTICLE 5.

By a "mining property" is understood a *pertenencia* or an aggregation of contiguous *pertenencias* held under a primordial title or under a title transferring ownership, derived from the former.

COMMENTARY.—See the Introduction, pages 5 to 8; also Art. 19 of the Law.

TRANSLATOR'S NOTE. There exists no satisfactory English equivalent for the term "*pertenencia*." Its translation as "location" would be misleading, by reason of the many fundamental differences existing between a *pertenencia* under the Mexican law and a location under the American law. In the first place, a *pertenencia* is the minimum unit of mineral grant; whereas a location is the maximum unit. For other essential differences, see page 6 of the Introduction. The use of the term "location" as a translation of "*pertenencia*" would tend also to confuse the latter with "*fundo minero*," meaning an aggregation of *pertenencias*. These objections apply with equal force to the use of "claim" as an interpretation of "*pertenencia*." Furthermore "*pertenencia*" is a term in com-

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mon use among English-speaking mining men in Mexico, and its translation by "location" or "claim" would, therefore, be superfluous as well as misleading.

The Spanish word "demasia" is also in common use among English-speaking miners here. The technical term "fraction" is not an equivalent, because "fraction" signifies a part only of a location, whereas demasia may signify a part of a pertenencia or several pertenencias of irregular shape. The term "gore" would be available if it did not necessarily connote triangularity of shape. See following Article for a definition of "demasia."

"Titulo" and "titulado" are translated herein "title" and "under title," respectively. The corresponding terms used in American Mining Law are "patent" and "patented," but for various practical reasons the employment of these equivalents is here avoided.

ARTICLE 6.

When in the location of a mining tract it is not possible, by reason of the adjoining mining properties, to reduce the former to complete pertenencias, the irreducible portion shall be dominated a demasia, and shall be regarded for all legal purposes as composed of as many pertenencias as there are hectares comprised in its horizontal projection; and any resulting fraction of a hectare shall be regarded as one pertenencia more.

When the irreducible portion is less, in horizontal projection, than a hectare, it shall likewise be called a demasia, and shall be regarded for all legal purposes as a pertenencia.

The Regulations shall prescribe the terms and conditions under which pertenencias and demasias shall be located.

COMMENTARY. A hectare covers 2.471 acres, that is, 10,000 square meters, a meter measuring 39.37 inches. The principles underlying Arts. 4 and 6 in respect of the shape of the pertenencias constituting a mining property are these: where possible the ground located must consist entirely of true pertenencias; where this is impossi-

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ble, then the irreducible excess is termed a demasia, and is deemed to be composed of as many pertenencias as there are hectares contained in its area. It will be noted that a demasia may comprise less, or may comprise more, than one pertenencia. A demasia is simply a grant, or a part of a grant, which does not contain a square hectare. It may embrace only one or part of one irregularly-shaped pertenencia, or several such pertenencias.

For the conditions under which pertenencias may be located, see pages 21 to 28 of the Introduction and the General Regulations in Part Three of this book.

ARTICLE 7.

The owner of a mining property has the right to extract and make use of every substance enumerated in Article 1, whether found on the surface or in the subsoil of the mining property.

COMMENTARY. The intent of the Article can be made clear by an illustration. If a property is denounced as a copper mine, for instance, and it should afterwards be found to contain lead deposits, no fresh mining title will be required to mine the lead ore. But the same mine could not be worked under the grant as a marble quarry, because marble is not one of the substances subject to Federal gift, and is therefore not embraced in the mining title issued by the Federal Government.

For a statement of the general principles of the Mexican mining law by virtue of which a mineral grant gives a right to the minerals only, and not to the possession of the surface ground, see page 6 of the Introduction. In regard to the conditions under which a miner may secure the use or ownership of the surface ground, see Chapters IV and VI of this Law, entitled **LEGAL EASEMENTS** and **EXPROPRIATION**, respectively, Arts. 61 to 78 and 87 to 96.

ARTICLE 8.

Mining operations may not be extended beyond the boundaries corresponding to each property, according to the title-deed, even though the adjoining land be free ground.

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COMMENTARY. The owner of a mining grant may not, except by virtue of an easement, cross the vertical planes of his property, either above or below the surface. His operations must be confined within his boundary lines drawn downward indefinitely and perpendicularly to the horizon. The Mexican law recognizes no subsurface extralateral rights. In other words, under no circumstances may a miner follow a lode outside the vertical planes of his grant, the "apex rule" of American mining being unknown to the Mexican law. Obviously, in the case of adjoining mining properties, the rule stated in the Article is subject to modification by private agreement.

See Art. 12 of the Law for the meaning of the terms "free ground."

For the criminal liability involved in a breach of the rule contained in the Article, see Art. 102 of the Law.

ARTICLE 9.

The use and enjoyment of the waters springing in the interior of the workings of a mining property belong to the owner of the latter; consequently he may draw such waters and dispose of the same, with all the substances contained therein, whether in a state of suspension or of solution. He shall have no right, however, to claim any indemnity when the said waters are exhausted or diminished as the result of the unwatering of other mining properties.

Whenever the appearance of water in the interior of the workings produces the drying-up or the diminution of springs belonging to other parties, the latter may recover the waters belonging to them, but without depriving the owner of the mining property of the water needed by him for the conduct of his enterprise and without right to exact from him any indemnity.

The transfer or the loss of ownership of a mining property involves, respectively, that of the use and enjoyment of the water existing or springing in the interior of the workings.

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COMMENTARY. It will be noted that the owner of a mining property is also the owner of the waters springing from the mine; but this ownership is subject to the following limitations. Only the water springing from the workings of the mine belongs to the owner; springs existing on the mining property belong to the owner of the surface ground. If the draining or unwatering of a neighboring mine results in the drying-up or diminution in volume of waters owned by a miner under this Article, the latter can claim neither the recovery of the water nor compensation. When, however, the appearance of water in the mine results in the drying-up or diminution in flow of springs belonging to another party, the latter may demand the restitution of the water so lost, except that the mine-owner has the right to retain such an amount of water as he may need for the operation of his enterprise, and for this he is not required to make any compensation to the owner of the springs.

The limited character of the ownership referred to is shown by the provision contained in the last paragraph of the Article. If the mine is transferred to another party by sale or otherwise, the right to the use and enjoyment of the water in question passes, in the absence of any stipulation to the contrary, with the property; and on the same principle, if the mines are lost through failure to pay the mining tax the waters are also lost. However, so long as the title to the mines is not forfeited, the owner may make use of the waters for agricultural or industrial purposes, or may even sell them; but he cannot give a good property title, since the vendee would, in the event of a forfeiture of the mining property, lose all his rights in the waters bought.

ARTICLE 10.

The mining industry is of public utility. Consequently, owners of mining properties have the right of expropriation in the cases and under the conditions prescribed in this law.

COMMENTARY. See Chap. VI of the Law, entitled EXPROPRIATION, Arts. 87 to 96.

CHAPTER II.

ACQUISITION AND FORFEITURE OF MINING PROPERTY.

ARTICLE 11.

Mining property is acquired originally from the Nation, by means of a title issued by the Executive Power through the Departamento of Fomento, after denouncement and the other requisites established by this law.

COMMENTARY. To denounce a mine means to apply to the Government for a patent or title thereto. See, further, Chapter II of the Introduction.

The Mining Agent is the local representative of the Department of Fomento, in regard to which latter, see note to Art. 13 of the Law.

To mine without a title is a criminal offence. See Art. 102 of the Law.

ARTICLE 12.

Only denouncements of mining pertenencias in free ground shall be permitted. Pertenencias under title and those in respect of which a denouncement is pending shall not be regarded as free ground.

COMMENTARY. By "free ground" is meant ground not already covered by a mineral grant or a denounce-

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ment. It may be public land or private land. See also the following article.

In regard to the use of the phrase "under title," see translator's note under Art. 5 of the Law.

As to the exact effect of the admission of a denouncement, as distinguished from its reception, see note to Art. 21 of the Law.

ARTICLE 13.

Until the expiration of the term of thirty days from the date on which the proper notice shall have been posted on the Bulletin board of the Agency, the following shall likewise be regarded as not free ground:

I. Pertenencias the title to which has been declared forfeited.

II. Pertenencias in regard to which the denouncement proceedings have been definitively disapproved.

II. Pertenencias which are declared free by the Department of Fomento, in accordance with this Law.

COMMENTARY. The purpose of the Article is to give all persons an equal opportunity to denounce forfeited mining grants and mineral ground which has been the subject of rejected applications, and to prevent the improper use of information secured through private channels. As to the method of computation of the term of thirty days, see Art. 36 of the General Regulations.

The Department of Fomento exists for the purpose of promoting and encouraging the development of the mining interests, agriculture, and the industries generally.

The only cause of forfeiture of mining grants is non-payment of the mining tax. See Art. 51 of Law.

The Agency referred to is the local Mining Agency. See Introduction, page 22; also Arts. 1 to 13 of the General Regulations, Part Three of this book.

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ARTICLE 14.

A denouncement shall not be admitted if the denouncer has been guilty of default in respect of a former denouncement covering all or part of the same property. This disqualification shall endure for one year from the date of the declaration of default.

COMMENTARY. It will be noted, from the above and succeeding articles of the chapter, that some breaches of the law cause an applicant to be declared in default ("moroso"); while others, less serious in character, cause only the declaration that he has **withdrawn** his denouncement ("desistido"). The latter declaration will not bar or prejudice a fresh denouncement of the property by the same party, provided, of course, that no other application has been filed in the meanwhile.

ARTICLE 15.

The denouncement shall be made in writing and in duplicate, and shall set forth the name, age, occupation, nationality, domicile and residence of the denouncer, the substances which it is proposed to mine principally, the number of *pertenencias*, their location on the ground, with the indications which serve to identify them, the designation of the adjacent mining properties, if any, and the situation of the *pertenencias*.

COMMENTARY. See Chapter II of the Introduction for a form of denouncement in Spanish, with English translation and explanatory foot-notes; and Arts. 16 and 17 of the General Regulations, Part Three of this book.

ARTICLE 16.

The denouncer shall file with his application the certificate of deposit of the value of the

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stamps which the law requires to be affixed to the title-deed.

COMMENTARY. See initial articles of the Mining Tax Law, Part IV of this book; also Arts. 34 and 36 of the Law.

ARTICLE 17.

The denouncer may designate approximately the number of *pertenencias* in the following cases:

I. When in the denouncement itself the boundaries of the property are quite clearly defined, in terms which may be easily identified on the ground.

II. When the *pertenencias* denounced are entirely surrounded by properties already under title or by *pertenencias* denounced and surveyed.

COMMENTARY. Briefly: Where the boundaries of the ground denounced are unmistakable, the number of the *pertenencias* may be stated approximately.

ARTICLE 18.

In the cases referred to in the preceding article, if the deposit made under Article 16 should be for a larger amount than that due, the excess shall be returned to the denouncer.

If the deposit should be for a less amount, the denouncer shall pay in the difference, and if he fails to comply with this obligation he shall be deemed to have withdrawn his denouncement.

COMMENTARY. As to the effect of such assumption of withdrawal, see note to Art. 14 above.

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ARTICLE 19.

Each denouncement shall comprise a single pertenencia or an aggregation of contiguous pertenencias. A denouncement may also comprise pertenencias which are not contiguous, provided the following conditions concur:

I. That within the perimeter of the ground denounced, there exists properties under title or pertenencias previously denounced.

II. That all the pertenencias denounced are located on the same vein and lie within the district of the same Mining Agency.

COMMENTARY. The case contemplated in the Article is that of a denouncement of a piece of ground having within its boundaries some land not open to denouncement. In such a case it is not necessary for all the pertenencias to be contiguous, provided they lie along the same vein and within the jurisdiction of the same Mining Agency, and that the lack of continuity in the pertenencias denounced is due to the presence of unde-nounceable ground and is therefore unavoidable.

ARTICLE 20.

The denouncement shall be presented personally by the denouncer, or by a lawful representative, or by an attorney-in-fact with power under a public deed or under letters of attorney. In this last case it shall be necessary for the principal to ratify the letters of attorney by means of a public deed or by an appearance in person, within the sixty days following the presentation of the denouncement.

COMMENTARY. A public deed is one signed before a notary and inscribed in his notarial protocol. Certified copies are issued to the parties thereto, the original remaining permanently in the archives of the notary. A public deed differs from a private instrument chiefly in

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the fact that the execution of the latter requires no notarial intervention and is less formal and solemn. Letters of attorney ("carta poder") may consist of a simple letter addressed to the attorney (not to the Mining Agent), and stating the power conferred. It should be in the Spanish language and must bear the signature of two witnesses. If signed in the Republic, there must be affixed a five-cent revenue stamp, cancelled by the writing or stamping thereon of the name of the principal and the date and place of signing. If the power of attorney, whether in the form of a deed or of a letter, is executed abroad, it must be "legalized" before it can be used here. See note under Art. 86 of the Law.

By "lawful representative" is meant a person whom the law vests with the right to represent another: as a husband to represent his wife; or a tutor, his ward. The general manager of a Mexican mining corporation is vested by law with authority to denounce mines for his company. It is advisable, however, to cover this in the By-Laws.

ARTICLE 21.

The Mining Agent shall receive the denouncement, note the same in his register, and set down in the latter and in the original and duplicate of the denouncement the day and hour of filing. The denouncer may demand that these annotations be made in his presence. If, in the judgment of the Agent, the denouncement is not sufficiently clear, he shall request of the party presenting the same the necessary explanations and shall set forth these explanations in the original and in the duplicate denouncement and in the register book. The lack of explanation shall not be ground for failing to register the denouncement.

COMMENTARY. It will be seen from this and the three succeeding articles that a Mining Agent may not, under any circumstances, refuse to **receive** and record a denouncement filed with him. If, however, within three days after the filing he finds that the denouncement embraces ground already covered by a mining title or pre-

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viously denounced, or that such denouncement is otherwise radically defective, the admission will be denied and action thereon suspended. But all decisions of the Mining Agent are subject to review by the Department; and if the Agent denies the admission, his decision will be subject to immediate review by the Department at the instance of the party in interest. After admission, the denouncement, if it fulfils the requirements of the law, and subsequent formalities have been complied with, will be approved in due course by the Department and a title issued. See the three succeeding Articles and Articles 30, 34 and 48 of the Law; also the provisions of the Mining Tax Law, Part Four hereof.

In regard to the criminal liability of a Mining Agent who falsifies documents, see Arts. 98 to 101 of the Law.

In regard to the obligation of a disqualified Agent to register a denouncement filed, see Art. 8 of the General Regulations, Part Three of this book.

ARTICLE 22.

The requirements indicated in the preceding article shall be observed even in the case of denouncements presented, either simultaneously or successively, in respect of the same pertenencias, without prejudice to the provisions of Article 24.

COMMENTARY. It will be noted that several denouncements covering the same piece of ground may be received, by the Agent, but of these only the first one filed meeting the requirements of the law, is admitted. See, further, notes under Arts. 21 and 49 of the Law.

ARTICLE 23.

Within three days after the presentation of the denouncement, the Agent shall determine whether or not it shall be admitted. In the former event he shall set in motion the procedure; in the latter, he shall set down in writing the grounds of his decision, which shall be reviewable by the Department of Fomento, at the instance of the denouncer.

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COMMENTARY. See also the two preceding articles and notes thereunder.

The central feature of any proceeding conducted under the Mexican law, whether judicial or administrative, is the "expediente." This consists of the originals of all documents filed in the case, arranged as received or in chronological order, and carefully stitched together. The "expediente" is the complete and original record of the case to date, and wherever the proceedings may happen to be, whether in progress or in suspension, there also will be found the "expediente," or a copy thereof.

ARTICLE 24.

When two or more denouncements presented simultaneously and referring to the same pertenencias shall have been declared admissible, the casting of lots shall determine which denouncement shall be set in motion, unless the preference be determined by agreement between the parties in interest.

COMMENTARY. See Arts. 14 and 15 of the General Regulations, Part Three of this book.

ARTICLE 25.

The procedure shall comprise the appointment of an expert to survey the property and to make the plans, the publication of an abstract of the denouncement, the publication of the notice that the work of the expert has been filed with the Agency, and the opposition proceedings, if any.

COMMENTARY. "Oposicion" is herein translated "opposition," "opposition proceedings," or "opposed claims," the technical terms "protest" and "adverse claim" being avoided in the translation. Compare remarks under Art. 5 of the Law. For like reasons, "opositor" is rendered "opposing claimant," and not "adverse claimant."

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The expert referred to in the Article performs an office similar to that of the Deputy Mineral Surveyor under the laws of the United States. As to the criminal liability of a surveyor guilty of falsification, see Arts. 98 to 101 of the Law.

In regard to the appointment of the expert and his duties, see Arts. 7, VII, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the General Regulations, Part Three of this book.

In regard to the publication of the notices referred to in the article, see Arts. 21, 22, 23, 27, 30, 34 and 35 of the General Regulations.

ARTICLE 26.

If no opposition of a nature to cause the suspension of the administrative proceedings shall have been filed before the expiration of the term set for their completion, the Agent shall transmit to the Department of Fomento a copy of the record as it stands.

COMMENTARY. Compare Art. 43 of the Law.

See Arts. 11 and 20 of the General Regulations, Part Three of this book.

ARTICLE 27.

The Department of Fomento shall examine the record, and if approval of the same is proper, shall grant the denouncer a term within which to construct the monuments and to prove that he has constructed them. Upon compliance with this requisite by the denouncer, there shall be issued to him the title-deed, which shall vest the lawful possession of the property without need of further formality. If the denouncer fails to erect the monuments within the term granted him, he shall be declared in default.

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COMMENTARY. The Article does not authorize the holder of a valid mining title to use force to secure actual possession of his grant. His entry must be effected peaceably, the assistance of the local judicial authorities being invoked where necessary.

A declaration of default will cause the applicant to lose all his rights under the denouncement, and the ground denounced will be declared free. See also Art. 14 of the Law.

In the matter of monuments, see Arts. 27, 32, 33, and 34 of the General Regulations, Part Three of this book, and Transitory Article 8 of the Law.

ARTICLE 28.

The Department of Fomento shall disapprove the record when the denouncement or the proceedings are defective by reason of an infraction of the law or the Regulations, if such infraction is attributable to the denouncer. In this case, the disapproval of the record places the denouncer in default.

COMMENTARY. What constitutes an "infraction" of the Law or Regulations within the meaning of the Article, is a matter left largely to the discretionary judgment of the Department. Reading this Article with Art. 30, it is clear that not every defect in the denouncement, even though attributable to the denouncer, will cause the application to be disapproved. On the one hand, if the property denounced is not clearly identified, or if proceedings prescribed to safeguard the interests of third parties have not been complied with, or if the fiscal laws or regulations of the Federation have been infringed, then, in any of these cases, the record will in all probability be disapproved. On the other hand, errors of form merely, as distinguished from errors of substance, will be regarded leniently, and an opportunity be given for their amendment under the provisions of Art. 30. Needless to add, that the greatest care should be exercised to avoid all errors and defects in the proceedings or in the papers filed, since they always cause trouble and delay.

In reference to default, see Art. 14 of the Law and note thereon.

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ARTICLE 29.

If the infraction of the law or Regulations is not attributable to the denouncer, the Department of Fomento, in view of the evidence presented, which it shall pass upon according to its judicial discretion, shall decree the validation of the proceedings wherein defective.

ARTICLE 30.

The Department of Fomento may direct the amendment, by the proper party, of defects in the denouncements or the proceedings when such defects do not involve infractions of this law or of the Regulations. A denouncer who, in such a case shall not comply with the instructions of the Department of Fomento shall be declared to have withdrawn.

COMMENTARY. As to what is regarded as an infraction of the Law or Regulations, see note under Art. 28 above.

A declaration of withdrawal does not prejudice a fresh denouncement of the same ground by the same party.

ARTICLE 31.

In cases of infraction of the law or Regulations, or defects in the proceedings, attributable to the Agent or to the surveyor, the Department of Fomento shall exact the penalty from the one or the other, without prejudice to the right of the denouncer to demand from the proper party indemnification for the loss and damage suffered.

COMMENTARY. For the criminal liability involved in cases arising under this Article, see Arts. 98 to 101 of the Law.

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ARTICLE 32.

A denouncer who fails to attend meetings or other proceedings described by this law or the Regulations shall be declared to have withdrawn. The Department of Fomento may, however, excuse such absence when the denouncer shows that it was due to causes not attributable to him. In such a case the proceedings shall be ordered reinstated, in so far as may be necessary, but no excuse whatever shall be admitted from the denouncer if he fails to attend the new meeting or proceeding called.

COMMENTARY. Compare Arts. 39 and 45 of the Law.

ARTICLE 33.

A denouncer who has not been guilty of a default may withdraw his denouncement before the Department of Fomento issues its final decision on the record.

COMMENTARY. See note under Art. 14 of the Law regarding the advantages of withdrawal as compared with defaulting.

ARTICLE 34.

A failure to furnish revenue stamps shall not suspend the proceedings. In the interim the folios of the record shall be legalized with the seal of the Agency; but the Department of Fomento shall require the stamps to be affixed before rendering its final decision on the record. If the denouncer fails to furnish the stamps within the term allowed him for that purpose, he shall be declared to have withdrawn.

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COMMENTARY. See Mining Tax Law and Regulations, Part Four of this book; also Art. 16 of the Law.

ARTICLE 35.

A failure to pay fees to the Mining Agent, as provided in the Regulations, shall be ground for the declaration that the denouncer has withdrawn.

COMMENTARY. See Schedule of charges appended to the General Regulations.

ARTICLE 36.

In every case of withdrawal, whether voluntary or by operation of the law, and when a denouncer is guilty of a default, the deposit made upon filing the denouncement shall be applied, in the first place, to the payment of the stamps omitted from the record, and in the second place, to the payment of the fees of the Mining Agent; but if the amount of the deposit is not adequate, the denouncer shall be liable for the payment of the difference.

ARTICLE 37.

The following are grounds for opposition to a denouncement:

I. A partial or a total invasion of the pertenencias covered by a title which has not been declared lapsed.

II. A denouncement lawfully filed previously in respect of a part or of all of the same pertenencias.

COMMENTARY. The property tax referred to is the Federal Mining Tax. See Part Four thereof.

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See Art. 8 of the Law and notes thereunder in regard to what constitutes an invasion or overlapping.

It will be noted from the terms of Article 43 of the Law that the above classification of the grounds of opposition is not exhaustive. If the ground of the opposition falls within the terms of the above article, the proceedings before the Mining Agent are suspended; otherwise, they are not.

See Art. 37 of the General Regulations, Part Three of this book.

ARTICLE 38.

Any opposition based on one of the grounds established in the preceding article shall be filed with the Mining Agent, within the terms fixed by the Regulations.

COMMENTARY. But see also Art. 44 of the Law.

For a summary of the general principles underlying this and the succeeding five articles, see the notes under Article 43 below.

See Arts. 31 and 37 of the General Regulations, Part Three of this book.

ARTICLE 39.

When the opposition shall have been filed, a meeting shall be called for the purpose of procuring an agreement between the parties, following the procedure laid down by the Regulations. Upon failure to reach an agreement, the parties shall be informed forthwith that they may elect either the administrative or the judicial form of trial for the adjudication of the claims of the opposition.

COMMENTARY. See Arts. 32 and 45 of the Law regarding the effect of a failure to attend the meeting here referred to.

See Arts. 39 of the General Regulations, Part Three of this book, and page of the Introduction.

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ARTICLE 40.

If the parties do not elect at once the administrative form of trial, the further progress of the record shall be suspended, and the said record shall be transmitted, within twenty-four hours, to the judicial authorities for the trial of the case, in accordance with the provisions of Chapter VIII of this Law.

COMMENTARY. It will be noted that either party may compel a trial by the courts. The denouncer, or second denouncer, as the case may be, is the party-plaintiff in such cases, but he has in his favor the rebuttable presumption that the ground denounced is free. See Arts. 112 to 115 and 122 of the Law.

ARTICLE 41.

In the event that the parties elect the administrative form of trial, the progress of the record shall continue, in order that, at the proper time, the Department of Fomento, after hearing the denouncer and the opposing claimant, in accordance with the provisions of the regulations, shall definitively adjudicate the claims of the opposition.

COMMENTARY. See Art. 44 of the General Regulations, Part Three of this book.

ARTICLE 42.

If the parties shall have elected the administrative form of trial, they shall have no right to apply for a judicial trial; but if they shall have elected the latter, they may, so long as the final judgment has not been rendered, submit the claims of the opposition to the Department of Fomento for determination.

ARTICLE 43.

Any ground of opposition distinct from those specified in Article 37 shall be alleged before the Agency, but shall not cause the suspension or the progress of the record. The Department of Fomento, when the record comes before it for review shall examine the ground alleged and shall determine whether or not it should be given consideration. In the affirmative event, the claims of the opposition shall be tried and adjudicated, following, in so far as applicable, the provisions of Articles 39 to 42. If the Department of Fomento rejects the claims of the opposition, the said Department shall proceed as if these claims had not been presented, without prejudice to the rights of the opposing claimant.

COMMENTARY. In regard to the failure to present an opposing claim to the Mining Agent, see also succeeding Article.

The following principles underlie the determination of claims set up against the granting of a mining title. In all cases the parties may agree to submit their claims to the Department of Fomento for final decision. Failing such agreement, the courts have jurisdiction, with the exception next stated.

If the adverse claim is not based upon some alleged subsisting title or prior denouncement, but on some other ground, as, for instance, that the land denounced contains no minerals or is excluded from denouncement on grounds of public utility, then the Department has sole initial jurisdiction and a declaration by the latter against such claim is virtually final. If, however, the Department admits the consideration of such adverse claim, it is then tried and finally determined by the Department or by the Courts, as the parties may elect under the rule first above given.

A party deeming his constitutional rights infringed by a decision of the Department may appeal to the Federal Courts for protection, under what is termed an "amparo" proceeding. Such appeals are very rare in the circumstances indicated.

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See Art. 31 of the General Regulations, Part Three of this book.

ARTICLE 44.

The Department of Fomento may take under consideration during the revision of the record, any opposing claims presented to it, provided that the opposing claimant shows that he failed to present his case to the Mining Agency owing to causes not attributable to him.

COMMENTARY. See also note under Art. 122 of the Law.

ARTICLE 45.

An opposing claimant who fails to attend the reconciliatory meeting shall be deemed to have withdrawn. The Department of Fomento may, however, excuse such absence when the opposing claimant shows that it was due to causes not attributable to him. In such a case, the proceedings shall be ordered reinstated in so far as may be necessary; but in respect of the new meeting called, no excuse whatever shall be admitted from the opposing claimant.

COMMENTARY. Compare Arts. 32 and 39 of the Law.

A withdrawal under the circumstances indicated in the Article is final and conclusive as between the applicant for the grant and the adverse claimant, but not as between the applicant and the Federal Government. The latter, representing the Nation, is itself interested in granting a title only where such a course is proper, entirely irrespective of the claims of private parties. A title will be issued only where the Law and Regulations so warrant. See, further, Arts. 44 and 122 of the Law and notes thereunder.

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ARTICLE 46.

Applications the object of which is the reduction of the number of pertenencias comprised in a denouncement shall be admissible only within the first forty days of the proceedings. In no case shall such application produce the effect of modifying the term for the presentation of the plans.

COMMENTARY. In regard to the reduction of the number of pertenencias in general, see Chap. III of the Law, Art. 52.

ARTICLE 47.

Applications the object of which is to modify a denouncement so as to augment the number of pertenencias comprised therein, shall not be admitted. Such augmentation shall require an independent denouncement.

ARTICLE 48.

The decisions of Mining Agents rendered during the progress of the record are reviewable by the Department of Fomento upon petition of the party in interest.

COMMENTARY. See Art. 11 of the General Regulations, Part Three of this book.

ARTICLE 49.

The title shall be issued without prejudice to the rights of third parties, in favor of the denouncer. For the title to be issuable in favor of some other party, the right of the latter must be proved by means of a public instrument.

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COMMENTARY. The law prohibits the use of force to secure actual possession of a mining grant. In case physical resistance is offered to a person holding a valid title, the aid of the local judicial authorities should be invoked. It will be noted that the Government in no wise guarantees that the title it issues will be effective. The title-deed itself always states clearly that the grant is made without prejudice to any existing rights of third parties. It sometimes happens that mining titles apparently valid and effective overlap. They will cover, in part at least, the same ground. In such an event the grant bearing the earlier date is preferred in law and vests the true title, subject to the provisions of Art. 86 of the law in regard to registration. But consult also Arts. 52 to 60 of the Law, and especially 58 and 59.

A party holding a prior title who has failed to oppose in due course the issue of a second title by the Department to the same property, is not thereby debarred from subsequently bringing action in the courts to determine the question of true ownership. It saves expense and trouble, however, to file and prosecute the opposition at the proper time with the Mining Agent or before the Department, in accordance with the provisions of Art. 38 and subsequent articles.

To mine without a title is a criminal offence. See Art. 102 of the Law.

Set Art. 116 of the Law regarding the annulment of a title by the Government on the ground of fraud.

See Art. 151 of the Law in the matter of replacing lost title-deeds.

As to what is a public instrument, see note under Art. 20 of the Law.

ARTICLE 50.

The Department of Fomento may refuse to issue a mining title, even though the record of the proceedings be regular if there exists a ground of public utility established by law warranting such refusal, and provided that the denouncer be reimbursed the lawful expenses incurred by him in the denouncement. If the reason of such a decision should disappear, the Department of Fomento shall so declare, and a notice to that

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effect shall be published pursuant to the terms of the Regulations, in order that the denouncer to whom the issue of the title was denied may make application for the same within ninety days. If the denouncer fails to avail himself of this right before the expiration of the said term, the pertenencias shall be deemed free ground.

COMMENTARY. The mineral grant or title issued by the Federal Government is not a matter of grace, but of right. The Department may not deny the application for a grant except by virtue of some provision of the Law or Regulations. It will be noted that this Article permits the denial of a title on the ground of public utility only when such public utility is of the kind established by law.

See Arts 35 and 36 of the General Regulations, Part Three of this book.

ARTICLE 51.

Mining property shall be forfeited for the non-payment of the Mining Tax, pursuant to the provisions of the law relating thereto.

COMMENTARY. Mining property held under a Government grant is not subject to forfeiture except for non-payment of the Federal tax. See the Mining Tax Law, Part Four of this book; also Art. 145 of the Mining Law in regard to the right of a stranger to pay the tax; and Art. 34 of the General Regulations, Part Three of this book.

CHAPTER III.

REDUCTION OF PERTENENCIAS, UNDER TITLE.—CORRECTION OF LOCATION OF PERTENENCIAS.—CORRECTION OF TI- TLE DEEDS.—DIVISION OF MINING- PROPERTIES.

ARTICLE 52.

When it is desired to reduce the number of pertenencias constituting a mining property, the application for the reduction, together with the corresponding title-deed, shall be filed with the proper Mining Agency. The procedure in such a case shall comprise the making of new plans and the issuing of a new title-deed, the original being cancelled.

When the issue of the new title-deed shall have been ordered, the surplus of the ground comprised in the original title shall be declared free, and the party in interest shall be allowed a term for the erection of new monuments, following the provisions of Art. 27.

COMMENTARY. See Arts. 45, 46 and 50 of the General Regulations, Part Three of this book.

In regard to the augmentation of a mining denouncement, see Art. 47 of the Law.

ARTICLE 53.

The correction of the location on the ground of pertenencias covered by title, for the purpose of adjusting such location to that indicated in the denouncement and in the title-deed, shall be lawful. The correction referred to in this article shall not require the issue of a new title.

COMMENTARY. See Arts. 47 and 50 of the General Regulations, Part Three of this book.

ARTICLE 54.

When the location of the pertenencias, as indicated in the title-deed, does not correspond with the location as described in the denouncement, the correction of the title and the issue of a new title-deed shall be proper, even when the location on the ground accords with that described in the denouncement.

COMMENTARY. It will be noted from this and the succeeding articles of the chapter that the data contained in the denouncement, and not in the title-deed, is made the basis and standard of all corrections. See Art. 59 of the Law.

See Arts. 48 and 50 of the General Regulations, Part Three of this book.

ARTICLE 55.

When neither the location of the pertenencias on the ground, nor that designated by the corresponding title-deed, accords with the location as described in the denouncement, the correction of the location and the issue of a new title shall be proper.

COMMENTARY. See Arts. 48 and 50 of the General Regulations, Part Three of this book.

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ARTICLE 56.

The corrections referred to in the three preceding articles may be made upon petition of the owner of the property or of the adjacent proprietors interested, or by the direction of the Department of Fomento acting upon its own initiative. In the latter case the final decision of the Department of Fomento shall be without prejudice to the rights of the mine-owner and of the adjacent proprietors believing their rights to be infringed.

ARTICLE 57.

In every case where the location of the pertenencias on the ground undergoes modification, the Department of Fomento shall set a term for the erection of proper monuments, under the sanction provided in Article 101. The said Department shall suspend the issuance of a new title, where it is proper that this should be issued, pending the erection of the monuments.

COMMENTARY. See Art. 27 of the Law and notes thereunder.

ARTICLE 58.

The Department of Fomento at the request of the owner of the property, may direct the amendment, administratively and without prejudice to the rights of the third parties, of any errors existing in the title-deed, provided that the amendment does not affect the location of the property. In this case a new title-deed may be issued and the preceding one cancelled.

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COMMENTARY. See Arts. 47 and 50 of the General Regulations, Part Three of this book.

ARTICLE 59.

All corrections shall be based on the data contained in the denouncement.

COMMENTARY. It will be noted throughout the chapter that the denouncement, and not the title-deed, is made the basis of all corrections.

See Arts. 26 and 28 of the General Regulations, Part Three of this book.

ARTICLE 60.

In order that the division of a mining property into two or more properties, shall produce legal effects, the presentation of new plans in accordance with the provisions of the Regulations and the issue of new title-deeds, with the cancellation of the prior title-deed, shall be necessary requisites.

Before the new title-deeds are issued, the provisions of Art. 57 shall be observed.

COMMENTARY. See Art. 4 and notes thereunder in regard to the indivisibility of the pertenencias.

See Arts. 49 and 50 of the General Regulations, Part Three of this book.

CHAPTER IV.

LEGAL EASEMENTS

ARTICLE 61.

Common properties shall suffer in favor of mining properties the legal servitudes of passage.

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drainage, aqueduct, ventilation, and transmission of electric power.

Mining properties shall not be subject to any legal servitude but those of drainage and ventilation in favor of other mining properties.

COMMENTARY. By the phrase "common properties" is meant non-mining properties, and it will be found so translated hereinafter.

Servitudes or easements are either legal or voluntary. **Legal easements** are those which the law recognizes as a natural and necessary consequence of the relative situations of the dominant and servient estates. Upon the making of a money payment to cover the loss and damage suffered, the creation of a legal easement may be compelled by the owner of the dominant estate. Until such easement is formally constituted, however, the right to its enjoyment lies dormant and cannot be exercised. (Art. 71 of the Law). A **voluntary easement** requires the consent of the owners of both estates for its creation. It may impose any sort of servitude on the servient estate in favor of the dominant estate, and creates, as do all easements, a true property right, and not merely a personal right. In other words, an easement follows the servient estate into the hands of a third party and cannot be repudiated by the latter. The deed or document creating the easement must be registered, however, in order to afford full protection.

The right conferred by an easement inheres and runs with the dominant estate, in the same manner that the corresponding obligation runs with the servient estate. Consequently, a person losing a mining grant by forfeiture, loses also his right to exercise the easements attached to the property. Such easements are not extinguished, however, by such forfeiture, but inure to the benefit of a subsequent grantee of the mining property, without need of a fresh creation, provided they have not been lost by prescription.

This Chapter treats only of **legal or obligatory easements in favor of mining properties**. These are of two kinds: First: where the burden is imposed on **non-mining property**; and secondly, where the burden is imposed on another **mining property**. Legal mining easements imposed on non-mining property are of passage, drainage, aqueduct, ventilation, or transmission of electric power. Those imposed on mining property are either of drainage or of ventilation. These constitute all the **obligatory easements** relative to mines; the creation of other forms of

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easement is entirely voluntary and optional with the parties. It must be carefully borne in mind, however, that under the Mexican law a mining property, as such, embraces only the mineral deposits in or on the soil, and never the surface ground generally. Where a miner owns not only the subsurface, but the surface also, he does so by virtue of two permanently distinct and separate titles, namely: the freehold of the minerals and the freehold of the soil. The first is a mining estate, and the second a non-mining estate. His mining estate may be burdened only with the legal easements of drainage and ventilation; whereas his non-mining estate may be burdened with the legal easements of passage, drainage, aqueduct, ventilation, and transmission of electric power.

Where the miner has no lease or freehold of the surface ground, it will be impossible for him to work his mines without the creation of certain easements. For instance, he cannot lawfully have even a permanent right of access to his mine without first formally creating an easement of passage. To avoid trouble and complications, the miner usually leases or purchases the freehold of the ground in which his mineral grant is located.

For many practical purposes, the creation of an easement is a form of condemnation of property. Strictly speaking, however, an easement gives only a certain use of a stranger's property; whereas expropriation gives the property itself. Other essential differences between the creation of an easement and the expropriation of property will appear from a reading of this Chapter and Chap. VI of the Law. See especially Art. 87 and notes thereunder, and page 8 of the Introduction.

ARTICLE 62.

The servitudes of passage, drainage and aqueduct suffered by non-mining properties in favor of mining properties shall be governed by the provisions of the Civil Code of the Federal District, in respect of the rights and obligations of the dominant and servient estates; subject to the provisions of the succeeding article in regard to the easement of passage.

COMMENTARY. See Arts. 942 to 1058 of the Civil Code of the Federal District for the rules governing the servitudes referred to.

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ARTICLE 63.

The easement of passage may consist not only in the right of transit across non-mining properties, but in the right to install permanently, across the said properties, transmission cable lines or any other means of transportation authorized by the Regulations, if devoted exclusively to the needs of the exploitation of the mining property and establishing a means of communication between the latter and the highway, railroad lines, or reduction works.

The width of the strip over which the easement referred to in this article is to be exercised, shall not exceed ten meters, except by agreement to the contrary.

COMMENTARY. Compare Art. 87 of the Law.

See Art. 52 of the General Regulations, Part Three of this book.

ARTICLE 64.

The easement of ventilation imposed on non-mining properties consists in the right to communicate the interior workings of mining properties with the surface, for the sole purpose of furnishing, to the latter properties, the necessary ventilation.

COMMENTARY. The word "necessary" used here must be interpreted liberally. The law is solicitous for the well-being of the operatives working in mines.

The terms "easement" and "servitude" are synonymous, easement denoting rather the right enjoyed by the dominant estate and servitude the corresponding burden imposed on the servient estate.

ARTICLE 65.

The easement of transmission of electric power imposed on non-mining properties consists in

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the right to instal aerial or underground lines from the point of generation of the electric power to the mining property where it is to be utilized, crossing the intermediate properties. It includes, furthermore, the right of passage, not only for the construction and preservation of the installations, but for the patrolling of the same.

The principles relative to the easement of passage are applicable to the easement of transmission of electric power, in so far as such principles are compatible with the nature of the latter.

ARTICLE 66.

The easement of drainage imposed on mining properties consists in the right to drive tunnels or openings through the same for the purpose of draining the workings of other mining properties. This easement consists also in the right to utilize, for the drainage of the dominant estate, tunnels or openings used by the servient estates for a like purpose.

ARTICLE 67.

The exercise of the easement referred to in the preceding article does not authorize the traversing of a shaft by drainage tunnels or openings or the driving thereunder of the latter.

ARTICLE 68.

The servient estate may utilize for its drainage the same tunnels or openings which, in the exercise of the easement, have been opened for the drainage of the dominant estate.

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ARTICLE 69.

The easement of ventilation imposed on mining properties consists in the right to establish communications across the same for the purpose of ventilating other mining properties. This easement also consists in the right to utilize, for ventilation, the workings of the servient estate, provided that this is not incompatible with the use to which such workings are devoted.

ARTICLE 70.

In the exercise of the easement of drainage and ventilation referred to in Articles 66 and 69 the following rules shall be observed:

I. While the work is in progress the owner of the servient estate shall have the right to employ an inspector for the protection of his interests. He shall also have the right to require the construction of doors at points where the workings of the servient estate are cut, in accordance with the terms of the Regulations.

II. When in the course of the work, any of the substances comprised in Art. 1, and the workings of which pays cost, are found, the owner of the dominant estate shall hoist these to the surface, notifying the Department of Fomento and the owner of the servient estate. If the latter fails to dispose of the said substances within the term of sixty days from the date on which he receives the notice, they shall remain on the surface at the risk of the owner of the servient estate.

III. If, in the execution of the work in free ground, any of the substances referred to in the preceding section are found, the owner of the

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dominant estate, after notifying the Department of Fomento, may dispose of such as it may be necessary to extract in the execution of the work, but he shall have no right to exploit the deposit, except in the event that he obtain a proper title. For this purpose he shall have a preferred right to present his denouncement within a term of thirty days from the date of the discovery of the deposit and within a zone of one hundred meters on each side of the center line of the tunnel.

IV. The right accorded to the owner of the servient estate by the provisions contained in the last part of the first section shall subsist so long as the easement endures. He shall have a like right whenever, with his own workings, he cuts those by means of which the easement in his estate is exercised.

COMMENTARY. Section I of the Article. The inspector has a right only to watch and report; he may not personally interfere with the progress of the work.

Sections II and III. For the criminal liability in the case of a breach of the provisions of these sections, see Arts. 102 and 103 of the Law.

The Regulations referred to in Sec. I are the Special Police Regulations, to be issued early in 1910.

Compare Art. 9 of the Law.

ARTICLE 71.

The easements referred to in this chapter shall be constituted in one of the following ways:

I. By the consent of the owner of the servient estate, expressed in a public instrument.

II. By a decision of the Department of Fomento.

III. By a judicial decree.

COMMENTARY. All mining easements must be constituted in one of the three ways enumerated in the Ar-

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ticle. Until so constituted the right to the easement is dormant and cannot lawfully be enjoyed. See the Introduction, page 9.

ARTICLE 72.

Failing the consent of the owner of the servient estate, the owner of the dominant estate shall apply to the Department of Fomento, which, after hearing the first-named, shall resolve whether or not the easement should be constituted. In the affirmative event, the said Department shall determine the use and extent of the easement, the material conditions of its constitution, and the indemnity to be paid to the owner of the servient estate.

COMMENTARY. See Art. 51 of the General Regulations, Part Three of this book.

ARTICLE 73.

The decision of the Department of Fomento authorizing the constitution of the easement shall be deemed definitive if not excepted to within the term of thirty days.

ARTICLE 74.

If within the term set in the preceding article, the owner of the servient estate shall signify his dissent, the Department of Fomento may authorize the execution of the work by means of which the easement is to be enjoyed, the owner of the dominant estate first executing a guaranty to cover any loss or damage that might be caused.

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COMMENTARY. The effect of the Article is to allow the necessary construction or excavation work to proceed, and the right of easement to be exercised, pending final determination by the courts of the question in dispute. Compare Art. 89 of the Law.

ARTICLE 75.

The decision referred to in the preceding article shall be communicated to the owner of the servient estate, who shall file his suit in court within the term of thirty days; but if he fail to do this, the easement shall be definitively constituted, and the guaranty shall be ordered cancelled.

ARTICLE 76..

If the Department of Fomento decides that the easement should not be constituted, or that it should be constituted under conditions diverse from those of the petition, the party applying for the creation of the easement may file his suit in court within the term of thirty days, after the lapse of which term he shall forfeit this right.

ARTICLE 77.

In authorizing the constitution of easements, the Department of Fomento shall be governed by the provisions of the Civil Code of the Federal District in matters not expressly covered by this law. In the constitution of the easements of drainage and ventilation, the Department of Fomento shall take into consideration the advantages and the inexpediences of the system proposed as compared with those offered by other known systems.

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COMMENTARY. The provisions of the Civil Code referred to are contained in Arts. 942 to 1058.

ARTICLE 78.

The enlargement of easements already constituted shall be governed by the rules prescribed for their creation.

CHAPTER V.

MINING CONTRACTS.—REGISTRATION.

ARTICLE 79.

The following shall be deemed mercantile acts subject to the provisions of the Commercial Code, in matters not especially provided for in this law:

I. Mining organizations.

II. Contracts having for their purpose the transfer or operation of mines.

III. Contracts executed in relation to the products of mines.

COMMENTARY. The purpose underlying the Article is the unification and Federalization of the laws relating to the mining industry throughout the Republic. See, further, note under Art. 3 of the Law. Consult, also, Arts. 107 and 123 of the Law and notes thereunder.,

In the determination of any of the matters named in the Article, recourse must be had first to the provisions of this Law. If it fails to cover the point in question, the Commercial Code must be consulted. If the latter also is silent, the prescriptions of the Civil Code of the Federal District are applicable if the question is one of property; but if the question is not one of property, but of personal status for instance, the local State laws apply. See notes under Art. 3 of the Law.

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It will be noted that the provisions contained in Art. 24 of the old Mining Law, prohibiting the formation, for the working of mines, of "asociaciones," namely, informally organized companies, are omitted from the new Law. Consequently, any form of company, partnership or association, known to the Commercial Code, may be organized to operate or exploit mines. Under Art. 271 of the Commercial Code, which by the terms of the above Article is implicitly, but clearly, made applicable to mining organizations, a company or partnership may be formed without the need of any formalities whatever. For purposes of proof, however, it is well to reduce the terms of such informal organizations to writing. It should be noted also, that under Art. 82 below, a public deed and registration thereof are required for the terms of such an agreement to be effective as against third parties. Furthermore, such informally-constituted companies or partnerships are not true corporations. They are not legal entities. The liability of the associates is not limited to the amount of their several interests in the association; but each is liable for all debts contracted by the association to the full extent of all his belongings. See, further, page 14 of the Introduction.

The Commercial Code, enacted in 1887 and in force since 1890, is more liberal in its provisions than the Civil Codes of the different States and Federal Districts. It regards less the form and more the substance. It is operative throughout the Republic, not only in mining but in commercial matters.

ARTICLE 80.

The value attributed to the mining properties or rights, in the deed of incorporation of a mining company or partnership, by the founders thereof, shall be regarded as proved for legal purposes.

COMMENTARY. Art. 175 of the Commercial Code requires that the value of the property or rights which form part or all of the capital stock of a company at the time of organization, shall be proved. In practice this is done by means of a certificate signed by some professed expert, and is little more than an empty formality. Since, at the time of organizing a mining company, the value of the mines to be operated is often unknown or speculative, the new Law, by the provisions of the above Article, dispenses altogether with the need or proof of value in such cases.

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ARTICLE 81.

No mining contracts shall be rescindable on the ground of lesion.

COMMENTARY. The term lesion denotes the injury suffered by one of the parties to a contract who does not receive an adequate consideration or equivalent from the other. The existence of such an inequality of consideration gives a right to rescind the transaction in certain cases. As provided in this Article, there exists no right of rescission on the ground of lesion in mining contracts.

ARTICLE 82.

The offices of the Commercial Register in the States, Federal District, and Territories shall keep a special book in which shall be recorded:

I. Title-deeds to mining property.

II. Public deeds and judicial or administrative decisions which transfer or affect the ownership of mining properties or by virtue of which property rights in the same are created or are affected.

III. Public deeds containing a promise of transfer of mining properties or of mining pertencencias.

IV. Public deeds and judicial decisions which affect the operation of mining properties.

COMMENTARY. Where the law requires a document to be recorded, a failure to record (except in the case of mortgages) does not affect the force and validity of the document as between the parties thereto, but only as against third parties. See, further, Arts. 85 and 86 below and notes thereunder. The registration of a mortgage is necessary to its validity even as between the parties. Art. 1889 of the Civil Code of the Federal District.

Property or real rights ("derechos reales") embrace all rights in or against the thing itself, whether the property be real or personal, and are distinguished from personal rights, which are inforceable only as against the per-

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son. The definitions given in the Civil Code of the Federal District are as follows:

Art. 1326. A personal obligation is one which binds only the person contracting the same and his heirs.

Art. 1327. A real obligation is one which affects the thing itself and is operative against any holder of the same.

It will be noted that, under the Article, all deeds or documents which affect **property rights** ("derechos reales") in mines require registration. This includes all titles, whether primitive or derivative, deeds, and judicial or administrative decisions, touching the ownership of mining properties, or creating easements in, or in favor of, such properties, or mortgages thereon. For purposes of mortgage and registration, a mining property embraces not only the mine proper, but all its accessories, such as buildings, machinery, tools, and live stock. Under the Mexican law, these are all regarded as real estate ("inmuebles") when and so long as devoted to the operation of the mine. Rights of "use," "usufruct," and "possession," annuities when secured on the property, and leases when exceeding six years, also require registration. It will be noted, lastly, that, under Section IV of the Article, contracts affecting the operation of the mine must likewise be recorded.

Under the Civil Law, which prevails in Mexico, a married woman has community rights (a sort of dower) in mines acquired by her husband during the existence of the marriage, as also in certain other cases. Her signature should be secured, therefore, to all transfers of mining property or rights, made by her husband, including options. A married woman cannot transfer real property without the consent of her husband expressed in the deed of transfer.

Regarding the options referred to in Sec. III of the Article, see Art. 86 and notes thereunder.

As to the application of this article to existing unrecorded documents, see Transitory Article 6 of the Law.

ARTICLE 83.

The registration referred to in the preceding article shall take place in the office belonging to the municipality where the mining property is situated.

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ARTICLE 84.

Title-deeds creating mining easements in non-mining properties shall be recorded in the Registration offices to which the servient estate belongs under the law.

ARTICLE 85.

The registration referred to in Sec. III of Article 82 shall be effective as against third parties for the period fixed in the contract, but not to exceed two years reckoned from the date of registration, even though a longer term should be set for the subsistence of the promise.

COMMENTARY. This article contains an important innovation. Under the old Mining Law, as well as under the Commercial Code, and the civil codes of most, if not all, of the States of the Republic, an option to purchase property binds only the person granting the option. In other words, it is not a charge on the property and does not follow it into the hands of third parties, even though cognizant of the existence of such option. Consequently, under the old Law, the owner of a mine might give an option thereon to one party and then afterwards sell it to another. The only remedy available to the holder of the option in such a case was a civil or criminal suit, or both, against the vendor, who, in the meanwhile, might have become insolvent or at least inaccessible. Under the present Law, the option is a charge on the property, and is effective against the world. In a word, the option is made a **property right** ("derecho real".) (See notes under Art. 82 of the Law.) It will be noted, however, that to be so effective, the option must be registered. Also, that mining property cannot be effectually tied up under an option for a longer period than two years. An option given for a longer period will hold as against the grantor for the full term agreed upon, but only for the two years as against third parties.

It will be noted from the wording of Sec. III of Art. 82 of the Law that only public deeds containing a promise of transfer will be recorded. Accordingly, a private instrument giving a mining option cannot be registered, and

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cannot, therefore, be made effective as against the world. Options given in the United States or the United Kingdom should be acknowledged before a notary there and afterwards protocolized and registered here. See note under Art. 86 below.

As a married woman has community rights in mines owned by her husband in most cases, her signature should be secured to an option given by him. See notes under Article 82, above.

ARTICLE 86.

When the document requiring registration is presented to the Office within thirty days from the date of the signing of the deed or the rendering of the decision in the case, the registration shall be effective as from the date of the document. If the document is filed subsequently to the said thirty days, the registration shall be effective only as from the date of the filing.

The registration of public documents coming from abroad shall be effective as from the date on which a certified copy of their "protocolization" is presented to the proper office.

COMMENTARY. Compare the four preceding articles and notes thereunder.

It will be noted that the Article allows a term of thirty days within which to register a deed, and that deeds registered within such term are effective as from their date of signature. In other words, a registration has a retroactive effect. Consequently, a search in the records is not conclusive as to title, as there may exist some unregistered document affecting the title to the property in question and bearing date within the thirty days before the search is made, and this document may be made retroactively effective by registration. Even a recorded deed is not conclusive as to title, since there may still exist some outstanding valid deed whose term of 30 days for registration has not yet expired. For instance, a deed transferring a mine is dated April first. On April fifteenth the same vendor offers the same mine to another party, who, finding no previous sale recorded, purchases. On April twentieth the second purchaser registers his deed of sale. On

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April twenty-fifth the first purchaser offers his deed for registration. In such cases the mine belongs to the first purchaser, and purchaser number two, although he has taken all reasonable precautions, has no right to the property, but only a personal action against the fraudulent and criminal vendor. The only absolutely safe course is not to pay over the purchase money unless the deed stands unimpugned on the records of the Registration Office upon the expiration of thirty days after its signature.

The "protocolization" of a document is its inscription in the protocol of a notary public. (See note under Art. 20 of the Law.) Documents coming from abroad, to be of any legal value here, must be "legalized," that is, officially authenticated by the Mexican Minister or Consul resident in the territory where the document is executed, whose signature must in turn be authenticated by the Department of Foreign Relations in Mexico City. (Art. 455 of the Code of Civil Procedure of the Federal District.)

CHAPTER VI.

EXPROPRIATION.

ARTICLE 87

The owner of a mining property shall have the right to occupy, within the boundaries of his *pertenencias*, the portion of the surface ground strictly needed by him for the enjoyment and exploitation of the surface deposits, for the buildings appurtenances and necessities of the mining operations, and for the installations required for the treatment of ores extracted from the property and from the properties annexed thereto if belonging to the same owner.

He shall also have the right to occupy within or without the perimeter of his *pertenencias* and subject to the provisions of the Regulations, the

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necessary ground for the establishment of economic railroads of a permanent character, devoted to the service of the enterprise.

COMMENTARY. Economic railroads are those devoted to the needs of the mines and their accessories. The surface ground of a mineral grant is not embraced in the grant, but remains the property of the owner of the land. To avoid complications, miners usually lease or purchase the land, either before or after acquiring title to the mine. Where this is impossible or undesirable, however, the condemnation of a part or of all of the ground can be secured, where needed to conduct the mining operations. It will be noted that under the new Law, ground for the installation of any building, machinery or plant, needed for the extraction of the metal from the ore, whatever the process, may also be condemned. It is a condition, however, that the ore to be treated shall be produced by the mineral grant where the plant is to be installed or by mines operated by the same organization and belonging to the same party.

The right to condemn land for railroad tracks is also an innovation. It will be observed that the terms "devoted to the service of the enterprise" are broad and comprehensive; also that the land expropriated for a railroad may lie inside the mining property or outside.

It should not be overlooked that two requisites must be fulfilled before the "right to occupy" referred to in the Article can be made effective. First, there must be a decision, either provisional or final, of some competent authority declaring the expropriation legally necessary; and secondly, compensation must be made to the owner of the ground expropriated, or the estimated indemnity placed in deposit, where the expropriation is provisional. Until these requisites are complied with, the right to occupy is dormant and cannot be actively exercised. See Art. 89 below regarding provisional expropriations.

Metallurgical establishments do not fall under the general provisions of this Law, but are subject to certain special Federal legislation and the local State laws.

See page 8 of the Introduction in regard to the miner's rights in general in the development of his grant; also Chap. IV of the Law, **Easements**, and particularly Arts. 61 to 78.

See Art. 51 of the General Regulations, Part Three of this book, for the procedure to be followed.

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ARTICLE 88.

In the absence of any agreement with the owner of the surface ground, the owner of the mining property shall apply to the Department of Fomento requesting the expropriation. The Department, after hearing the first-named, shall decide whether or not the petition is well-founded, determining, in the affirmative event, the extent of the property to be expropriated and the indemnity to be paid by the owner of the mining property.

COMMENTARY. See Article 94 below and note thereunder.

ARTICLE 89.

The owner of the mining property shall have the right to occupy provisionally the portion of ground designated by the Department of Fomento after placing the amount of the indemnity at the disposition of the expropriated party. The deposit shall be made in the office of the Treasury named by the Secretary of Fomento.

COMMENTARY. The Article introduces an important modification of the old Law. It will be noted that pending the final judgment of the courts, the party securing a provisional condemnation by the Department has a right to enter into actual possession of the ground. In practice, the courts are slow to reverse the decision of the Department, even though provisional. Consult carefully, however, succeeding articles of the Chapter. Compare also Art. 74 of the Law.

ARTICLE 90.

If the owner of the soil offers resistance to the occupation, the owner of the mining property

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may apply to the competent judge, to be placed in immediate possession of the ground designated in the decision of the Department of Fomento.

COMMENTARY. See Art. 118 of the Law. The miner has no right to use private force to overcome the resistance.

ARTICLE 91.

The administrative decision decreeing the expropriation may be assailed by the owner of the surface ground in a judicial proceeding, provided that he communicate his dissent to the Department of Fomento and file his action within the term of thirty days. If the requirements laid down in this article shall not have been observed within the said term, the decision of the Department of Fomento shall be deemed definitively accepted.

ARTICLE 92.

If the owner of the surface ground declares his acquiescence in the administrative decision or fails to assail the same in the manner provided in the preceding article, or if the said decision is confirmed by a judicial sentence, the owner of the mining estate may apply to the competent judge for the execution of the deed of adjudication in the premises, which deed shall be signed by the judge in default of the party expropriated, if the latter fails to appear to sign the same, within the time set by the court in its judicial discretion.

COMMENTARY. In the Mexican legal practice it is not an uncommon procedure for the court to sign for dilatory or recalcitrant litigants.

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ARTICLE 93.

If the judicial sentence modifies the terms of the expropriation as authorized by the Department of Fomento, the owner of the mining property may exercise the right conferred upon him by the preceding article, immediately the said sentence becomes final.

COMMENTARY. The right here referred to is that of securing the execution of the deed of adjudication in the premises.

ARTICLE 94.

A decision of the Department of Fomento declaring that expropriation is not warranted may be assailed judicially within the term of thirty days.

COMMENTARY. This Article, taken in connection with the foregoing provisions of the Chapter and especially of Art. 88, makes it quite clear that in order to secure the condemnation of land, the miner must first obtain a favorable decision from the Department of Fomento, and then, in the event of continued opposition, a confirmation or a modification of this decision by the Courts. The miner cannot apply to the courts in the first instance.

See Art. 119 of the Law in regard to the procedure applicable in cases arising under the Article.

ARTICLE 95.

When the owner of the surface ground is unknown or uncertain, the application for expropriation shall be published for the term of thirty days in the manner provided by the Regulations. If, before the expiration of this term, a party shall appear proving himself to be the owner of the ground the expropriation of which is sought, the procedure laid down in the preceding articles

shall be followed; but if no one proves himself owner of the ground within the term indicated, the Department of Fomento may authorize its expropriation, after deposit of the indemnity fixed, and the owner of the mining property may apply to the competent judge, for the execution by the latter of the deed of adjudication in the premises. Any person proving thereafter that he had proprietary title to the ground expropriated, shall have the right to receive the deposit, but not to assail the administrative decision decreeing the expropriation.

COMMENTARY. See Art. 58 of the General Regulations, Part Three of this book.

ARTICLE 96.

The expropriated party or his successor in title shall have the right, within the term of one year, to regain possession of the condemned ground or a portion thereof, in the following cases:

I. When the condemnation has been authorized for the execution of a certain work and the expropriating party fails to commence the same within the term of one year, or suspends the execution for the same term, except in case of *vis major*.

II. When all or part of the ground expropriated is devoted to some use distinct from that for which the condemnation was authorized.

III. When the title to the mining property for the benefit of which the expropriation was decreed is declared forfeited.

In none of these cases shall the expropriated party or his successor in title be under obligation

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to return any sum other than that paid by the expropriating party by way of indemnity, or the proportional part thereof, as the case may be.

Recovery proceedings shall not lie if the cause which gave rise thereto has ceased to exist.

COMMENTARY. The term of one year referred to in the opening paragraph of the Article is of prescription. If the expropriated party fails to bring his suit for the recovery of the ground within one year of the date on which such suit might have been brought, he loses his right of action. By *vis major* is meant superior force, inevitable accident, the act of God.

The last paragraph but one of the Article makes it clear that, in the cases contemplated, the expropriating party cannot recover any compensation for the work completed or for the increased value given to the land by improvements made by him during the occupation.

An example will show the application of the closing paragraph of the Article. If the expropriating party allows a year to elapse before commencing operations, but still gets them started before the expropriated party brings his suit, then the right of action of the latter is lost. In other words, the expropriated party must show that his cause of action for the recovery of the ground was in actual subsistence at the time of filing his complaint.

CHAPTER VII.

PENAL PROVISIONS.

ARTICLE 97.

Criminal offenses committed in breach of this law, and the civil liability to which such offenses give rise, shall be governed by the Penal Code of the Federal District, with the modifications established in the following articles.

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COMMENTARY. Taking this article with Art. 107, Sec. VI, of the Law, it will be noted that the criminal offences specified in this Chapter are tried under Federal law and in the Federal courts.

Under the Mexican law, the criminal and the civil liability arising from the same act may be tried and determined in the same suit, or proceeding.

ARTICLE 98.

Any Mining Agent or expert guilty of falsification in the discharge of his office shall suffer a penalty of from five months of arrest to one year of imprisonment and fine of the second class, without prejudice to the suspension and official disqualification provided in Article 748 of the Penal Code.

COMMENTARY. The expert referred to in this and the following articles is the official surveyor appointed in each case by the Mining Agent.

In regard to the offense of falsification, see Arts. 710 to 750 of the Penal Code of the Federal District.

The criminal law of Mexico provides for three grades of punitive personal restraint: "Arresto menor," which is arrest or detention for a term of from three to thirty days; "arresto mayor," detention for a term of from one to eleven months; and "prision," imprisonment for any term exceeding eleven months.

Fines are divided into three classes, as follows:

Class I. From one to fifteen pesos.

Class II. From sixteen to six thousand pesos.

Class III. As specified by the law for each offense.

ARTICLE 99.

When the Mining Agent or the expert is guilty of falsification in collusion with the denouncer or the opposing claimant, the agent or the expert shall suffer the penalties designated in Article 98, and the denouncer or the opposing claimant, arrest for a minor term and fine of the first class.

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If there has been bribery also, the rules relative to the accumulation of penalties shall be applied.

COMMENTARY. The act of offering a gratuity to a public officer, even to procure the performance by him of a legal duty, is a penal offense, and punishable by fine not to exceed twice the amount of the gratuity offered. Where the bribe is offered or paid in order to secure the commission of an unlawful act, or the omission of a legal duty, the briber is liable to imprisonment. Arts. 1014 to 1025 of the Penal Code of the Federal District.

ARTICLE 100.

Any expert fraudulently omitting to file, within the legal term, the plans and reports relative to a mining denouncement, shall suffer the penalty of arrest for a major term and disqualification, for a period of from one to five years, to discharge the office of expert.

COMMENTARY. See notes under Art. 98 above, for explanation of the terms "expert" and "arrest for a major term."

ARTICLE 101.

Except in cases where this law establishes a different sanction, the Department of Fomento may impose a correctional penalty of not to exceed one month of arrest or up to five hundred pesos fine, according to the gravity of the offense, on the following persons:

I. Any expert who fails, through negligence or carelessness, to file within the legal term the plans and reports relative to a mining denouncement.

II. Any Mining Agent who, in the progress of a denouncement, of an opposition, or of any other

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mining proceeding, commits a breach of the provisions of this law or the Regulations.

III. Any Mining Agent, expert, or other person taking part in a mining proceeding, who disobeys an order, issued by the Department of Fomento by virtue of the provisions of this law or the Regulations.

IV. Any person committing a breach of the Regulations, or other provisions relative to the policing and safety of mining operations.

COMMENTARY. Under the Mexican Law the administrative authorities have power to try minor offenses of a quasi-criminal character, and may inflict the penalty of imprisonment not to exceed one month, or of fine not to exceed five hundred pesos. (Art. 21 of the Constitution.) The punishment when inflicted administratively is called a correctional penalty ("correccion"), to distinguish it from the punishment imposed by a judicial authority, which is termed a penalty simply ("pena"). The law gives no right of appeal against the administrative sentence in these cases. If, however, a flagrant injustice is committed, recourse may be had to the Federal judicial proceeding of "amparo." (See note under Art. 43 of the Law and page 12 of the Introduction.) The fact that a person has been tried and sentenced by an administrative authority is no bar to his trial thereafter for the same offense by a judicial authority, provided the offense committed constitutes a crime ("delito"), as well as a minor offense ("faltas"). Furthermore, where the defendant is found guilty by the court, the infliction of the judicial penalty gives no right to the remission of the administrative penalty. Where, however, the defendant is found to be innocent by the courts, he has a right to the remission of the administrative penalty imposed, whenever the judicial trial establishes the fact that the act charged in the administrative proceeding was not committed, or that the act itself was lawful, or that the defendant was not legally responsible.

It should be noted that private parties are liable to administrative trial and punishment, not only for disobedience to the orders of the Department and breach of the police regulations relative to mining, as provided in the above Article, but also for gross disrespect shown towards the officers of the Government, whether orally or in writing.

The Police Regulations will be issued early in 1910.

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ARTICLE 102.

Any person exploiting without right any of the metalliferous minerals mentioned in Art. 1 of this Law, unless he is able to show that he acted in grounded error, shall suffer the following penalties:

I. If the exploitation takes place in free ground or in pertenencias denounced or under title, the penalty shall be from one to two years of imprisonment, and from one thousand to two thousand pesos fine.

II. If a denouncer exploits the property before securing proper title to the same, he shall suffer the penalty of arrest for a major term and fine of the second class.

COMMENTARY. To exploit a mine is to extract the ores therefrom for profit, that is, with a view to disposing of such ores. Exploitation is to be distinguished from mere prospecting or exploration work. See also second paragraph of Art. 24 of the General Regulations, Part Three of this book.

A grounded error is one which is justifiable or excusable.

For the explanation of the terms "arrest for a major term" and "fine of the second class," see notes under Art. 98 above.

ARTICLE 103.

In the case referred to in Section II of Article 70, if the person executing the work disposes of the minerals, he shall suffer the penalty provided in Section I of the preceding article.

COMMENTARY. In regard to the penalties referred to, see notes under Art. 98 above.

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ARTICLE 104.

The robbery of minerals by operatives or employees of a mining enterprise shall be regarded as comprised in Section V of Article 384 of the Penal Code.

COMMENTARY. It will be noted that the terms used—"minerals," "operatives or employees," and "mining enterprise"—are broad and comprehensive. The penalty fixed by the Penal Code is two years imprisonment, in all cases, leaving no discretion to the court. The employees of a metallurgical establishments, even if operated in connection with a mining grant, would probably not be regarded as coming within the terms of this Article. Robbery committed by such employees would fall under the jurisdiction of the State law and courts.

ARTICLE 105.

The penalties established in Article 497 of the Penal Code shall be applicable to any person destroying or changing the location of monuments or marks indicating the boundaries of a mining property, whether on the surface of the ground or in the interior of the workings.

COMMENTARY. The penalty fixed in Art. 497 of the Penal Code is arrest for from eight days to six months and fine of from ten to two hundred pesos, for ordinary cases; but if the purpose of the offender is to usurp adjacent ground, or to confuse boundaries in judicial dispute, or to rob the materials of which the landmarks are made, the penalty is arrest for from three to twelve months and fine of the second class. In regard to the nature of these penalties, see notes under Art. 98 above.

ARTICLE 106.

Disobedience or resistance on the part of private persons interfering with operations entrusted to experts shall be punished in accordance with Chap. IX, Title 8, Book 3 of the Penal Code.

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COMMENTARY. The articles of the Penal Code referred to are 904 to 908. In general, disobedience in the circumstances indicated render the guilty party liable to imprisonment as well as fine,

See Arts. 22 and 29 of the General Regulations, Part Three of this book.

CHAPTER VIII.

SUITS.

ARTICLE 107.

The Federal Courts are competent to try suits arising out of the following matters:

I. Opposition to denouncements or to the issue of mining titles.

II. Opposition to the correction of titles or to the correction of the location of pertenencias under title.

III. Nullity of mining titles.

IV. Expropriation by reason of mining operations.

V. Legal mining easements.

VI. Criminal offenses committed in breach of the provisions of this law, as set forth in Chapter VII.

VII. Criminal offenses endangering the stability of the workings of a mine or the lives of operatives in the interior of the workings.

COMMENTARY. The competency of the Federal Courts referred to in the Article is exclusive. The State courts have no jurisdiction in the cases specified.

It will be noted that in all the cases enumerated the Federal Government, representing the Nation, has an in-

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terest in the outcome of the proceedings, either directly because the title to mining property or the full enjoyment thereof is involved, or because a Federal criminal offense is charged. For this reason the Federal Courts have exclusive jurisdiction. See Introduction, page 12 Compare Arts. 79 and 123 of the Law and notes thereunder, and Art. 120.

ARTICLE 108.

In cases falling under sections I, II, III and IV of the preceding article, the judicial competency shall be determined by the situation of the mining property involved. In cases under section III of the said article, if the nullity of the title is interposed as a defense before a Federal judge, the same judge before whom the defense is made shall be competent.

COMMENTARY. This and the three following articles determine the competency of the Federal Courts as among themselves. The competency stated is always exclusive.

ARTICLE 109.

In suits relating to legal servitudes the judicial competency shall be determined by the situation of the dominant estate.

ARTICLE 110.

In cases falling under the two preceding articles, if the mining property is subject, by reason of its situation, to more than one jurisdiction, the judge selected by the plaintiff shall be competent.

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ARTICLE 111

In the criminal suits referred to in sections VI and VII of article 107, the Judge exercising jurisdiction in the place of the commission of the offense shall try the case, and if more than one Judge is competent, the one first taking cognizance shall try the case.

ARTICLE 112.

In the opposition proceedings referred to in sections I and II of article 107, the denouncer or the party applying for the correction shall always be the party plaintiff. The term for the filing of the complaint shall be thirty days.

ARTICLE 113.

If the complaint is not filed within the term designated in the preceding article, the Judge, on motion of the opposing claimant, shall declare the opposition justified, and the administrative record shall be returned to the proper person.

ARTICLE 114.

The opposing claimant shall base his exceptions only on the grounds expressly alleged by him at the proper time in the administrative proceedings.

ARTICLE 115.

In cases of opposition on the grounds designated in article 37, the denouncer has in his favor the presumption that the ground is free, if the opposition is based on the first of the afore-

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said grounds. If it is based on the second, the presumption shall be in favor of the second denouncer.

ARTICLE 116.

Within the term of three years, reckoned from the issuance of a title-deed, the Department of Fomento may bring suit to annul the same if obtained through deceit or fraud. The provisions of this article do not prejudice the right of a third party to bring suit to annul the title.

ARTICLE 117.

The suits referred to in sections I, II, III and V of article 107 shall be conducted as summary proceedings in accordance with the provisions of the Federal Code of Civil Procedure; but the ordinary term of proof may be extended up to forty days.

ARTICLE 118.

In cases of expropriation Judges shall make use of the processes of judicial compulsion provided in the Federal Code of Civil Procedure to render effective the rights granted to the owner of a mining property under Chapter VI of this law.

ARTICLE 119.

Questions raised by the owner of the ground of which expropriation is desired, in an attempt to assail a decision of the Department of Fomento and the questions referred to in Art. 94, shall

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be tried in a summary proceeding, subject to the provisions of article 117 in regard to the term of proof.

ARTICLE 120.

In the punishment of the offences referred to in Sections VI and VII of Article 107, the laws of procedure in force in Federal matters shall be followed.

ARTICLE 121.

In all suits referred to in the preceding articles of this Chapter the representative of the Public Ministry shall be heard. He shall see that the proceedings suffer no unwarranted delays, and to this end shall have the right to move for judgment by default against either party, and to make such other motions as are proper under the law. In these suits the representative of the Public Ministry shall follow the instructions communicated to him by the Department of Fomento.

COMMENTARY. The Federal Public Ministry, as defined in Art. 1 of the Law relating thereto, which went into effect on February 5th, 1909, is an institution charged with the duty of assisting in the administration of justice by the Federal Courts, of prosecuting Federal criminal offences, and of protecting the interests of the Federation in its courts.

The main purpose of Art. 121 is to safeguard the interests of the Federation, which, as already explained in the Introduction, is the immediate owner of all mineral deposits until granted by it and retains a contingent reversionary interest in the same thereafter. The Article serves another purpose. It renders difficult the tying-up indefinitely of valuable mining zones by collusive proceedings between the private parties in a suit, to the prejudice of other persons interested.

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ARTICLE 122.

Final judgments rendered in the suits referred to in article 107 shall be communicated to the Department of Fomento by the court rendering the same.

COMMENTARY. A verdict rendered by the courts in favor of the denouncer is not, however, necessarily followed by the issuing of title by the Department. The judicial decision binds the Department only in respect of the points raised or involved in the suit and determined therein. For instance, the opposing claimant may be vanquished in the courts on the ground set up by him, or he may suffer judgment by default; but this, obviously, is not conclusive on the general question of issuing a title to the denouncer. The Department may deny the application on some ground not alleged in the judicial proceedings. The Federal Government, representing the Nation, is itself interested in issuing mineral grants only where such a course is proper, irrespective of the claims of private parties. Compare Arts. 44 and 50 of the Law.

ARTICLE 123.

Suits arising out of the contracts referred to in article 79 shall be tried before the competent non-Federal judges, in accordance with the provisions of the Commercial Code.

Suits relative to mining properties in matters not comprised in article 107 shall be tried by the competent non-Federal courts in accordance with the corresponding local laws, the Commercial Code, or the Civil Code of the Federal District, as the case may be.

COMMENTARY. The fact that a case arises under a Federal law does not of itself give the Federal Courts jurisdiction: it must also involve the interests of the Nation. (Art. 97 of the Constitution.) See Introduction, page 12.

The provisions of Arts. 79, 107 and 123, as regards the law and jurisdiction applicable in each case, may be summarized as follows:

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A. All causes arising under Art. 107 are tried according to the Federal laws and by the Federal Courts.

B. All causes arising under Art. 79 are tried according to the Federal laws, except as indicated under the notes under that Article, but by the local State courts; unless some matter specified in Art. 107 is involved, in which event the Federal courts have exclusive jurisdiction.

C. All mining causes not comprised either by Art. 79 or by Art. 107 are tried according to the local State law and by the local State courts.

CHAPTER IX.

MISCELLANEOUS PROVISIONS.

ARTICLE 124.

Mining explorations shall be subject to the provisions of the Regulations of this law and of the special mining police Regulations, in accordance with the following bases:

I. To determine the zone of exploration, a fixed point easily identifiable shall be taken, which point shall serve as the center of a circumference whose radius shall not exceed five hundred meters.

II. To conduct explorations in private ground, the permission of the owner shall be required. If the latter refuses the permission, the applicant may have recourse to the Mining Agent, who, after hearing the owner and subject to the procedure laid down in the Regulations, shall grant the permission, provided there exists no lawful cause of impediment and after bond has been given by the explorer to satisfy any loss or damage that may be caused to the owner.

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III. Mining explorations in National lands may be conducted only with the permission of the proper Mining Agent, who may not deny such permission without lawful cause.

IV. The duration of the term of exploration shall be sixty days, which term shall not be extended and shall run from the date of the signing of the permit when this is issued by the Mining Agent, and from the date on which the permit is registered in the Agency when granted by the owner.

V. During the term of exploration only the explorer shall have the right to file denouncements of mining pertenencias within the zone.

VI. New exploration permits covering all or part of an exploration zone shall not be granted until after the lapse of six months from the date of expiration of the prior permit.

VII. In the event of a controversy between the explorer and the owner of the ground regarding the boundaries of the exploration zone, the burden of proof shall lie with the explorer.

VIII. Exploration zones shall not be granted in ground where mining operations have been executed, even though the pertenencias covered are abandoned. Nor shall exploration zones be granted at a distance of less than two hundred meters from the boundaries of a mining property, nor within the limits of populated places.

IX. The mining police regulations shall determine at what distance from buildings, railroads, and other constructions of public or private ownership, the carrying on of exploration work shall be permissible.

COMMENTARY. See Chapter II of the Introduction; also Arts. 53, 54, 55 and 56 of the General Regulations, Part Three of this book. The special mining Police Regulations are to be issued early in 1910.

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ARTICLE 125.

The mining police Regulations shall determine in what cases and under what conditions the carrying on of mining operations shall be permissible in the subsurface belonging to buildings or any other constructions of public or private ownership.

COMMENTARY. The Police Regulations are to be issued early in 1910.

ARTICLE 126.

The Department of Fomento may direct the inspection, by its own inspectors, of mining properties and of the installations annexed thereto when devoted directly to the mining operations. The object of these inspections shall be:

I. To determine whether the Regulations and police provisions relative to mines are being duly observed.

II. To obtain scientific and statistical data concerning the mining industry.

COMMENTARY. It will be noted that the purpose of the Departmental inspections is restricted as stated in the Article, except as provided in the two following articles.

The Police Regulations are to be issued early in 1910.

ARTICLE 127.

The inspection of a mining property may also be directed, upon petition of a lawful party, to determine whether or not another property is being invaded.

COMMENTARY. Regarding the criminal liability in such cases, see Art. 102 of the Law.

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ARTICLE 128.

When the Department of Fomento has grounds for believing that the workings of a property invade free ground, it may, upon its own initiative, direct the inspection of the property to determine whether or not such invasion exists.

ARTICLE 129.

In no case shall the inspectors making the examination investigate the commercial condition of the enterprise.

ARTICLE 130.

The Department of Fomento may direct the suspension of such mining operations as fail to conform to the prescriptions of the Regulations or police provisions, if the lives of the persons working in the mines are endangered thereby.

The order of suspension shall be restricted to the dangerous section or zone and shall be based upon the report of the inspector visiting the property or upon the investigation made by the local authority. The order of suspension shall remain in force so long as the cause which gave rise thereto subsists.

COMMENTARY. In regard to the criminal liability in such cases, see Art. 101, Secs. III and IV, of the Law.

It will be noted that the suspension of operations may be ordered by the Department, only where a breach of the Regulations endangers the lives of the operatives in the mines, and then only in respect of the dangerous zone.

The Police Regulations are to be issued early in 1910.

ARTICLE 131.

In grave and urgent cases the suspension may be directed upon petition of the Governor

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of the State or Chief Political Officer of the Territory, without the necessity of a compliance with the requisites prescribed in the preceding article.

COMMENTARY. The requisites referred to are the inspector's report or investigation by the local authority. But see next article.

ARTICLE 132.

In every case of the suspension of operations not based on the report of some official inspector of the Department of Fomento, the latter shall direct that an inspection be made at the earliest possible moment.

ARTICLE 133.

Such coal-mining operations as might endanger the lives of the operatives, the safety of the workings, or the stability of the soil, shall be subject to the police regulations and ordinances relative to mines.

COMMENTARY. It will be noted that only deposits of ore and of the other substances named in Art. 1 of the Law and coal-mines are subject to Federal police under this Law. Oil-wells and quarries of marble, building-rock, gravel, etc., do not come under the new Mining Law or its Regulations for any purpose whatsoever. See also notes under Art. 2 of the Law. In regard to the criminal liability in the cases falling under the Law, see Art. 101, IV, of the Law. The Police Regulations are to be issued early in 1910.

ARTICLE 134.

Ore-dumps constitute an accession of the mining property from which they originate. If it is impossible to determine their origin, the

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property in the same shall be governed exclusively by the general law.

COMMENTARY. Under the terms of the first part of this Article, ore-dumps are regarded as accessory to the mines from which they originate, provided that their source can be determined. Consequently, when a mine is transferred, unless the title to the ore-dump is retained, or transferred to some third party, it will follow the mine; and, on the same principle, if the mine is forfeited for the non-payment of mining taxes, the abandoned ore-dumps will also revert to the Nation. For the same reason, an ore-dump the origin of which is known, cannot be denounced under the Mining Law as mining property. The mine of origin must be denounced, and the title issued to the mine will carry with it the abandoned ore-dump. It should be noted, also, that ore-dumps may be lost by other acts which give rise to a presumption of abandonment of such dumps by their owner; for instance, the dumping of rock, whether containing minerals or not, on a stranger's property gives rise to the presumption of such abandonment. In this connection it should be recalled that the owner of a mining *pertenencia*, as such, does not own the surface ground even within the limits of his property. Accordingly, if he needs such surface ground on which to dump his ores, he should acquire the same by expropriation, purchase, or otherwise.

Where the origin of a dump cannot be determined, all questions of right to the same are governed by the general or local law, and especially by the legal principles relative to Abandonment, Accession and Prescription (Statutes of Limitation). The questions arising in such cases are too varied and intricate to admit of treatment in a hand-book.

Slag piles do not fall under the provisions of the Mining Code, but are subject to the local or general law, except as provided in Art. 87 for the expropriation of land needed for reduction works in certain cases. As in the case of ore-dumps the origin of which is indeterminable, the property in slag piles will depend largely upon the prescriptions of the Law relative to Accession, Abandonment and Prescription.

ARTICLE 135.

The Department of Fomento may execute contracts, under such terms as it shall deem

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proper in each case, for the exploitation of metallic substances existing in the bed of waters under Federal jurisdiction, so long as the special laws respecting waters shall not provide otherwise.

COMMENTARY. This Article at once authorizes the Department to execute contracts with private persons looking to the exploitation of the substances existing as indicated, and also makes it quite plain that such exploitation is not subject to the other provisions of this Law. Compare Art. 133 above and notes thereunder.

ARTICLE 136.

No title to mining property shall be issued in favor of foreigners denouncing *pertenencias* within a zone of eighty kilometers along the border line of foreign countries, unless they previously obtain special permission from the Executive of the Union. This requisite shall be necessary even though the denouncement be made jointly by foreigners and Mexicans.

If the permission is denied, the ground denounced shall be declared free, and the provisions of article 36 shall be applicable.

COMMENTARY. There is nothing in this or any other article of the Law prohibiting a foreign individual from denouncing a mine in the frontier zone in his own name. The prohibition is against the issue of the title to him without the permission of the President of the Republic. A foreigner may, therefore, denounce a mine and afterwards transfer his rights to a Mexican individual or to a company organized under the laws of Mexico for that purpose. He could make himself the holder of practically all the stock in such a company. Of course, the transfer contemplated must be made before the proceedings on the denouncement have been passed upon by the Department of Fomento. The course here suggested does not contravene either the letter or the spirit of the law. In regard to the question of incorporation under the laws of Mexico, see page 14 of the Introduction.

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For a summary of the situation of foreigners under this Law, and especially under this and the following eight articles, see the Introduction, page 12.

ARTICLE 137.

The permission referred to in the preceding article shall be necessary in order that foreigners may acquire, by any other title, mining properties or property rights therein within the aforesaid zone of eighty kilometers.

COMMENTARY. Art. 136 refers to acquisition under a direct grant from the Government; Art. 137, to acquisition from a private person, that is, under a derivative and not a primitive title.

As to what is embraced by the terms "property rights," see notes under Art. 82 of the Law.

ARTICLE 138.

The Regulations shall designate the terms within which application shall be made for the permits referred to in the two preceding articles and the conditions under which such permits may be granted.

COMMENTARY. See Art. 59 of the General Regulations, Part Three of this book.

ARTICLE 139.

Foreign companies are not qualified to denounce, or to acquire by any other title, mining properties or property rights therein within the zone designated in article 136.

COMMENTARY. It will be noted that foreign corporate partnerships and companies are prohibited from even denouncing a mine within the zone; whereas a foreign individual is under no such prohibition in regard to denouncement. See Art. 136 above and notes thereunder.

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A company or partnership incorporated under the laws of Mexico is not a foreign person even though all its members be foreigners and reside abroad. See Introduction, page 16.

The term "companies" as used in this and the succeeding articles embraces corporate partnerships as well as corporations proper.

ARTICLE 140.

Acquisitions made in contravention of articles 136 to 139 of this law are null. The action of nullity may be brought by a party in interest or by the Federal Public Ministry acting under instructions from the Department of Fomento.

COMMENTARY. Regarding the Public Ministry, see note under Art. 121 of the Law.

By "null" here is meant absolutely without legal effect. Consequently, innocent third parties are in no better position than the original unlawful purchaser or grantee. But see Art. 116 of the Law.

ARTICLE 141.

Whenever a foreigner acquires, by inheritance or by the adjudication of a court in payment of a debt, mining properties or real rights in the same within the zone fixed in Art. 136, he shall be allowed the term of one year within which to transfer the said properties, unless he obtains the permit referred to in article 137 before the expiration of the said term.

COMMENTARY. The term inheritance is here used in its broader acceptation, as including succession both under a will and upon intestacy. Note that the Article refers to foreign individuals only. See following article in regard to companies.

ARTICLE 142.

When the inheritance or the adjudication of a court in payment, is in favor of a foreign com-

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pany, the transfer shall be made, in every case, within the term of one year.

ARTICLE 143.

The judicial authorities having cognizance of the probate or the adjudication proceedings referred to in the preceding articles shall give opportune notice to the Department of Fomento of the existence of such proceedings.

ARTICLE 144.

The Executive of the Union shall apply, through the Public Ministry, for the attachment of the mining properties and rights acquired or held in contravention of the provisions of articles 136, 137, 139, 141 and 142.

The properties so attached shall be sold at public auction, in accordance with the provisions of the Federal Code of Civil Procedure, and the proceeds, after deduction of the expenses and taxes, shall be placed at the disposition of the parties in interest.

COMMENTARY. For a summary of the provisions of the preceding nine articles, relating to foreigners, see Introduction, page 13.

ARTICLE 145.

Any person may pay the property tax on a mining property, but only a person able to show that he has a legitimate interest in avoiding the forfeiture of the title shall have the right to demand from the owner of the property the reimbursement of the amounts so paid.

In the latter event, the credit arising out of the payment of the mining tax shall be regarded

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as having preference over all other debts to be paid out of the value of the property, including mortgage debts.

COMMENTARY. Compare Art. 51 of the Law. The second paragraph of the Article marks an important innovation in the existing law. See Arts. 23 to 25 of the Regulations appended to the Mining Tax Law, Part Four of this book.

ARTICLE 146.

In the absence of any express provision of this law to the contrary, the terms designated in the same or fixed by the Regulations shall begin to run from the day following that on which the corresponding notice was given or the proceeding conducted, the day of maturity being counted.

Sundays and national feast-days and days of mourning shall not be included in the computation of terms.

COMMENTARY. The national feast-days and days of mourning referred to in the last paragraph of the Article are as follows: All Sundays; February 5th; May 5th; July 18th; July 30th; September 16th; and December 12th.

See Art. 7, II, of the General Regulations, Part Three of this book, in regard to the office hours of Mining Agencies.

ARTICLE 147.

The rules established in the preceding article shall not be applied to the terms of prescription or to judicial terms, which shall be computed as provided in the respective laws.

COMMENTARY. Arts. 1125 to 1129 of the Civil Code of the Federal District and Arts. 146 to 155 of the Federal Code of Civil Procedure may be consulted.

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ARTICLE 148.

Rights to open and exploit tunnels, the operators of which have failed to comply with the provisions of the laws or concessions by virtue of which such rights were acquired, are declared lapsed.

ARTICLE 149.

The Department of Fomento shall determine the number of Mining Agents to be appointed and the district in which each shall exercise his office, having in view the necessities of the business to be despatched by the Bureau. The said Department shall resolve the doubts and questions arising in regard to the competency of Mining Agents.

COMMENTARY. See Chapter I of the General Regulations, Part Three of this book, and especially Arts. 2, 3, 4, 10, 14 and 15.

ARTICLE 150.

The services of Mining Agents shall be compensated in accordance with the tariff issued by the Department of Fomento.

COMMENTARY. See schedule of fees appended to the General Regulations.

ARTICLE 151.

When the owner of a mining property proves satisfactorily to the Department of Fomento the loss or disappearance of his original title-deed, a duplicate may be issued to him at his expense, in which duplicate shall be stated the reason of its issue.

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ARTICLE 152.

Mining title-deeds issued by the Department of Fomento shall be authenticated by the signature of the Secretary of the Department only.

ARTICLE 153.

The Department of Fomento shall issue the General Regulations to this law, the special mining police Regulations and the other reglamentary dispositions designed to render effective the prescriptions of the said law.

COMMENTARY. For the General Regulations, see Part Three of this book. The Police Regulations are to be issued early in 1910.

TRANSITORY ARTICLES.

ARTICLE 1.

This law shall go into effect on the first day of January, 1910.

ARTICLE 2.

Contracts for the exploration of mining zones shall continue in force in accordance with the stipulations contained in the same.

COMMENTARY. The Article refers to public contracts signed with the Mexican Government. Contracts entered into between private parties are, of course, also unaffected.

ARTICLE 3.

The proceedings on mining applications in progress on the first day of January of 1910 shall

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be continued and determined in accordance with the provisions of this law.

COMMENTARY. The principle underlying this and the following articles is that, until the Government title is issued, no vested rights are acquired in the mining property as such, and that, consequently, the new law may be and is made applicable to existing denouncements, without thereby infringing the principle that laws shall not be retroactive in their effects. Practically, however, rights may be lost; as, for instance, where foreigners have denounced mines in the eighty-kilometer frontier zone, without securing title thereto before January 1, 1910.

ARTICLE 4.

Suits arising out of any of the matters enumerated in article 107 of this law and in process of trial by a non-Federal Tribunal shall be transferred in their actual state and condition to the cognizance of the Federal Tribunals. The non-Federal Tribunals, without need of any motion or party, shall transmit the records to the proper Federal Judge or Tribunal within the term of thirty days reckoned from the first day of January, 1910.

Cassation appeals pending at the time this law goes into effect shall be heard and determined by the courts having cognizance of the same, and in accordance with the general laws applicable in the case.

ARTICLE 5.

A term of six months is hereby granted to the owners of mines, who have failed to comply with the provisions of the first part of article 2 of the Law of June 6th, 1892, within which to prove to the Department of Fomento that they have fulfilled the requirements which the laws

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on which their titles are based prescribe for the preservation of their property. If they fail to furnish the proof required before the expiration of the said term, the titles shall be deemed to have lapsed without need of any special declaration to that effect, and the properties involved shall be freely denounceable.

COMMENTARY. The term of six months is reckoned, of course, from January 1, 1910.

ARTICLE 6.

Mining title-deeds, acts, and contracts, recorded before the first day of January, 1910, in accordance with the provisions of the Mining Law of June 4th, 1892, and its Regulations, shall not require a second registration for the subsistence of their legal effects. Title-deeds, acts and contracts, which under this law are subject to registration and which have not been recorded, shall be recorded, and shall produce their legal effects in respect of third parties as from the date of registration.

COMMENTARY. The second part of the Article is in effect retroactive, and the provisions of Chapter V of the Law, Arts. 82 to 86, should be carefully examined.

ARTICLE 7.

Owners of mines who have failed to set landmarks to the boundaries of their properties are granted a term of one year within which to do this. Any person failing to comply with this prescription shall be liable for the loss or damage thereby caused to any third party, and furthermore, shall be subject to a fine of from one hundred to five hundred pesos, which the Depart-

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ment of Fomento shall impose upon proof of the offence.

If the party liable persists in the omission for the term of thirty days after the imposition of the fine, he shall be committed to the judicial authority for infliction of the penalty provided for disobedience of the lawful order of an authority, without prejudice to the construction of the monuments under the direction of the Department of Fomento, and at the expense of the party in interest.

COMMENTARY. The term of one year referred to in the first part of the Article is reckoned, of course, from January 1, 1910. See Article 27 of the Law and references thereunder.

The minimum penalty for disobedience of the lawful order of an authority is arrest for from one to eleven months and fine of from ten to one hundred pesos.

ARTICLE 8.

From the date on which this law goes into effect, all prescriptions in force which establish preferential rights in respect of the acquisition or denouncement of mining properties, even though contained in special laws, shall stand repealed.

ARTICLE 9.

From the date on which this law becomes operative, all laws and prescriptions on mining shall stand repealed, except those of a fiscal character, which shall continue in force in so far as not modified by this law.

COMMENTARY. See Part Four of this Book.

PART THREE.

GENERAL REGULATIONS OF THE MINING LAW OF THE UNITED STATES OF MEXICO.

CHAPTER I.

Mining Agents.

Art. 1. To hold office as Agent of the Department of Fomento, in the Mining Bureau, it is necessary to be a Mexican citizen in the enjoyment of his rights.

Art. 2. Mining Agents appointed by the Department of Fomento, under Art. 149 of the Law, shall receive and conduct the proceedings upon denouncements of mining lands filed with them, and perform the duties assigned to them under the Law, its Regulations, and the other provisions issued by the same Department.

In case of doubt regarding the application of the law, its regulations, or other related provisions, Mining Agents shall consult the Department of Fomento.

Art. 3. When a Mining Agency shall be established in accordance with the provisions of Art. 149 of the Law, the boundaries of the District in which such agency shall have jurisdiction shall be determined by the Department of Fomento, and notice of this determination as well as of any subsequent modifications thereof shall be published both in the Official Journal of the Federation and in the Official Journal of the corresponding State, as also for thirty days on the Bulletin Board of the newly-established Agency.

Art. 4. To each Mining Agency there shall be appointed one Chief Agent and such Deputy Agents as the volume of the mining business of the Agency may require.

The said Deputy Agents shall have the same qualifications as the Chief Agents, and shall substitute the latter in all cases of absence which may occur, whether

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temporary or absolute, as also in cases of failure to act caused by legal disqualification arising in any given case, upon call made by the Agent then acting.

Art. 5. When Agents exercising their duties shall need to absent themselves from the Agency for a period of fifteen days or less, they may do so, calling in first the proper deputy Agent, and giving due notice to the Department of Fomento by mail and by telegraph, if the latter exists.

When the period of absence is to exceed the said term, Agents shall apply for leave to the Department of Fomento, stating the reason for the absence as well as its duration, in order that the Department may decide whatever is expedient.

Art. 6. In case of death, or of a serious illness preventing the Agent from calling in the deputy, the latter shall communicate by the most rapid means with the Department of Fomento, informing the latter of the facts so that the said Department may authorize the aforesaid deputy to take charge immediately of the Agency, which shall be accomplished with the intervention of the Jefe de Hacienda (Chief of the Treasury) and in the presence of two witnesses. In the failure of the Jefe de Hacienda, the Agente del Timbre (Revenue Stamp Agent) shall act, and in case of failure of the latter the Postmaster, a minute of the proceeding being drawn up and signed by all parties thereto and a copy of the same forwarded to the Department of Fomento.

Art. 7. Mining Agents shall comply with the following provisions:

I. They shall post outside the Agency and in a place easily visible to the public, a sign inscribed: "Mining Agency of the Department of Fomento."

II. The office hours shall be permanently posted outside the Agency, which shall not be closed except on Sundays and days of national rejoicing or mourning.

III. Outside of the Agency, or if this be impossible, at the entrance and in a place visible and easily accessible to the public, there shall be placed a Bulletin Board on which shall be advertised all announcements prescribed by the Law, these Regulations, and other related dispositions.

IV. In some place visible and easily accessible from the Agency, there shall be a clock indicating local time.

V. They shall make and maintain up to date an inventory of the archives of the Agency.

VI. They shall keep a register of denouncements, wherein they shall enter the denouncements strictly in

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the order of the dates thereof, numbered consecutively and without leaving blank lines between the several entries.

VII. They shall keep a register of mining explorations, in which they shall enter the various permits strictly in the order of the dates thereof, numbered consecutively and without leaving blank lines between the several entries.

VIII. They shall also keep a register of graduated experts, this designation applying to those who have been graduated from some official establishment of the Republic as qualified to exercise the profession of engineer, or whose diplomas have been accepted or recognized by the Government.

IX. They shall forward to the Department of Fomento, within the first ten days of each month, a detailed statement of the denouncements which have been admitted, of the notices of and applications for exploration permits, and of the applications for correction, reduction, or sub-division of mining lands under title, filed with them during the previous month.

Art. 8. In case of legal disqualification, the Mining Agent shall record such fact and immediately call in the proper deputy; but in the case of the filing of denouncements or of adverse proceedings, the Agent shall first record the date and hour of filing of the same.

Art. 9. Mining Agents shall abstain from acting in cases of legal disqualification, being as follows:

I. In business in which they have an interest, either direct or indirect:

II. In business in which their blood relations, in a direct line in whatsoever degree, collateral relations within the fourth degree inclusive, or relations by marriage within the second degree, also inclusive, have an interest.

III. Whenever the Agent is the agent, partner, employee or manager, of one of the parties.

IV. Whenever the Agent has acted as counsel, attorney, or expert in the business involved.

Art. 10. In those parts of the Republic not included within a district assigned to a Mining Agency, denouncements of mining lands, and notices and certificates of exploration permits, shall be filed with the Agente de Correos (Postmaster), who shall record the denouncement or notice or certificate of exploration permit, noting the day and hour of filing, and shall immediately advise the Department of Fomento by telegraph, where the latter exists, and by mail.

Art. 11. The review of decisions of Mining Agents, referred to in Art. 48 of the Law, shall not suspend the

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process of the record, except in those cases where the said Law, its related Regulations, or other provisions, duly issued shall expressly determine otherwise.

Art. 12. Mining Agents shall collect their fees according to the terms provided in the schedule issued by the Department of Fomento.

CHAPTER II.

Denouncements of Mining Lands.

Art. 13. Denouncements shall be filed before the Mining Agency within whose district the denounced tract lies.

Art. 14. If the mining tract is to be found in the boundary of the districts belonging to two or more Agencies, the denouncement can be filed before any one of these.

Art. 15. If various denouncements of the same Mining Tract are filed before different Agencies which might be competent to record same, only that denouncement which has been presented first shall be valid; consequently, it shall be acted upon by the same Agency before which it was presented.

Art. 16. The denouncements shall state, in addition to the data given in Art. 15 of the Law, the fixed point from which measurement shall depart, and in order to identify easily the ground where the pertenencia shall be measured, mention shall be made where possible of well known points existing in the neighborhood.

Art. 17. No denouncement shall be admitted where the names of the denouncers are not designated specifically and individually therein, nor where such denouncement is not signed by the persons named therein, or by their attorneys or legal representatives.

Art. 18. Within the three days following the acceptance of a denouncement, the Mining Agent shall appoint an expert to survey the pertenencias and demasias denounced and to draw the corresponding plan, indicating on the same with absolute clearness both the bases on which are to be erected the monuments of the perimeter of the said tract, and the monuments found within a zone of one hundred meters around the same belonging to adjoining or neighboring properties.

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The Agent shall appoint the expert proposed by the applicant in his denouncement provided that such expert has a diploma.

If the party in interest fails to propose an expert in his denouncement, or if the expert proposed has no diploma, the Agent shall make the appointment freely, preferring, in every case the graduate experts of the locality, and only failing the latter, shall he appoint practical experts of the place, providing that in his judgment they possess sufficient qualifications to discharge their duties satisfactorily.

Art. 19. When an Agent rejects the proposed expert, he shall state the grounds of his ruling. The party in interest may file a complaint with the Department of Fomento through the Agency, within the three days following the date of the notification of the said decision; which latter, after the lapse of the said term, shall be deemed final and irrevocable. The Agent shall forward the complaint to the Department of Fomento within the three days following the day on which it was filed. From the date of the filing of the complaint to that of the receipt by the Agency of the decision rendered in the matter by the Department of Fomento, the proceedings shall be suspended. The Agent shall note the cause of the suspension in the record.

Art. 20. When the expert has been notified of his appointment, he shall inform the Agent within a term of eight days whether he accepts the appointment. If the appointee should not accept, or should fail to answer, the Agent shall so notify the denouncer, in order that the latter may designate some other graduate expert, if he shall have availed himself of such right upon the filing of the denouncement; and the appointment of the new expert shall be made in accordance with the provisions contained in the two preceding articles, for which a peremptory term of fifteen days shall be allowed, upon the lapse of which term, if the acceptance of the expert is not obtained, a copy of the record shall be sent to the Department of Fomento in order that the latter may declare the lapse of the denouncement, which declaration shall be published during eight days on the Bulletin Board of the Agency. Upon the termination of the said period, any person may denounce the tract.

The Agent shall record the proceeding in the file.

Art. 21. Upon the acceptance of the appointment by the expert and the making of the related notation, the Agent shall allow him a peremptory term of sixty days

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for the presentation, in quadruplicate, of the drawings mentioned in Art 18, accompanied by an explanatory report.

The Agent shall draw up in duplicate an abstract, which shall contain:

I. The abstract of the denouncement, with a clear and precise specification of the name and domicile of the applicant and the file number of the record.

II. The name, domicile and acceptance of the expert appointed.

III. Notice of the running of a peremptory term of one hundred and twenty days, reckoned from the date of the abstract, for the conduct of the proceedings before the Agency.

A copy of this abstract shall be posted on the Bulletin Board of the Agency, where it shall remain during thirty days.

The other copy of this abstract shall be given to the denouncer in order that, at his own expense and risk, and within the forty days following the date of the abstract, it may be published in three successive issues of the official journal of the corresponding State, Territory or Federal District. The denouncer shall deliver to the Agency, before the expiration of the 120 days of the process mentioned in section III, the proper copies of the said newspaper in which publication has been made, for incorporation in the record.

Of all of which due note shall be made in the record.

Art. 22. The Agent shall deliver to the expert a certified copy of his appointment, which shall conclude with the warning that any person resisting the execution of the field work to be done by the expert, shall be liable to the penalties established in Art 106 of the Law.

Art. 23. The publication of the abstract in accordance with the terms of Art. 21, shall serve as a formal citation to all persons claiming a right to oppose the denouncement of the mining property.

Art. 24. The operations to be conducted on the field by the expert appointed, under Art. 18, shall be made in such manner that, by the necessary scientific methods, the longitudes of the horizontal projections of the sides of the perimeter of the mining tract shall be obtained as also the angles which the same sides form with the astronomical meridian. An endeavor shall be made to refer one or more of the vertices of the perimeter, each of them, to at least two fixed points on the ground, or to one fixed point only, provided the distance to the same is also determined, and the data necessary to furnish vouchers for the work shall be collected.

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The description and survey of the property on the ground does not imply a right to occupy the same, but serves merely to mark the boundaries of the said mining tract.

Art. 25. The drawings of the mining properties shall be made neatly and correctly on cloth paper, so that the document may be preserved, copies being made on tracing cloth. These drawings shall contain the following data.

I. The name of the mine, the site of its location; the municipality, district, "partido," "canton" or department; the corresponding State, Territory or Federal District, and the other signs serving to identify the mining tract.

II. The longitudes of the horizontal projections of the sides of the perimeter of the mining tract, and the azimuth of the same sides, or their direction with reference to the astronomical meridian.

III. The area in hectares included within the horizontal projection of the mining tract.

IV. The scale, which shall be an entire decimal.

V. Even though a compass be used, the astronomic meridian alone shall be given and shall be represented by a line, parallel to the right edge of the drawing and oriented in such a manner that its superior extremity indicates the astronomic north.

VI. Signs of reference to fixed and conspicuous points on the ground.

VII. The adjoining mining properties.

VIII. The corresponding date and the signature of the expert.

Art. 26. The explanatory reports referring to the survey of mining lands shall necessarily contain, in addition to a description of the technical operations executed, all the data indicated on the drawings, so that, in case of need, a drawing can be made solely with the data in the report. There shall be given further, in the latter, the data on the location of the tract and on the relative position of the pertenencias composing such tract as they appear in the denouncement, with proper explanatory annotations in the event that such data differ from those secured on the ground.

Art. 27. The expert shall cause to be built on the ground, at the points where the monuments are to be erected under the provisions of Art. 18, solid foundations of masonry, of a height of not less than 50 centimeters, of horizontal surface and of square section, the sides of which shall measure at least 50 centimeters. There shall be marked on these foundations signs insur-

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ing an easy recognition and identification of each of the monuments according to its designation on the corresponding drawing.

Art. 28. Experts shall be governed by the terms of the denouncement in making the corresponding location and survey, and shall indicate on the plans not only the monuments of the adjacent mining tracts standing outside the denounced pertenencias, but also the monuments standing within the latter, and shall set forth in their reports all observations made to them by the denouncer, the owners of the adjacent properties, or any person deeming his interests prejudiced by the expert's operations.

Art. 29. If, in the execution of the work referred to in Art. 18, experts encounter physical resistance, they shall call upon the local authorities for assistance.

Art. 30. Upon the presentation of the reports to the Agency, the latter shall publish the fact of such presentation by means of a notice which shall be posted for a term of fifteen days on the Bulletin Board of the said Agency.

Art. 31. After the lapse of the one hundred and twenty days referred to in Article 21 without the filing of any opposing claim, or where such claim has been filed but is based upon one of the grounds mentioned in Art. 43 of the Law, or where the record has been returned by the courts with a final judgment in favor of the denouncer, Agencies shall, on their strictest responsibility, and within the following fifteen days, make a copy of the record and transmit the same with the three copies of the plan, under registered cover, to the Department of Fomento. With the said documents there shall be included a copy in full of the abstract of the denouncement.

Art. 32. Pursuant to the provisions of Art. 27 of the Law, the party in interest shall be informed that he is allowed the term of thirty days within which to erect his monuments, and to certify to the erection of same. For this purpose a copy of the plan shall be sent to him which he shall return certified and indicating exactly on the same the spots where monuments have been located and the distinctive marks placed on the same. The said certificate shall attest the fact that the monuments have been located at the points on the ground indicated in the aforesaid plan, and shall be certified, if possible, by the expert who made such plan, and if this is impossible, by some other graduate expert, and failing the latter by any practical expert of recognized capacity.

Art. 33. In the location of monuments the following requirements shall be fulfilled:

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I. Their location shall not be changed so long as the mining properties which they bound are not modified. They shall be solidly constructed and kept always in good repair.

II. They shall be located in suitable places and in such number as may be necessary so that it shall be possible to see from any one of the monuments the preceding and the succeeding monument; and by their dimensions, shape, color, or any other characteristics they shall be distinguishable from the monuments of the adjoining mining property.

Art. 34. Upon the issue of a title-deed to a mining property, it shall be delivered to the party in interest or forwarded to him through the Mining Agent, with a copy of the plan stamped by the Department of Fomento. The latter shall give to the Department of the Treasury notice that the title has been sent.

As soon as the Agent receives the aforesaid title-deed, for delivery to the party in interest, he shall post a notice on the Bulletin Board for the term of thirty days, notifying such party to come and receive same. If the party in interest shall not have recovered the title-deed before the expiration of the said term, the Agent shall attach the deed to the record, together with the notice of the notification.

The title-deed shall remain in the possession of the party in interest until the former shall receive the notice of the declaration of forfeiture of the property. If the document in question shall not have been reclaimed when this occurs, it shall be returned to the Department of Fomento.

Art. 35. The publication referred to in Art. 50 of the Law shall be made for a term of thirty days on the Bulletin Board, and ten times successively in the Official Journal of the corresponding State, Territory or Federal District.

Art. 36. The notice declaring that a mining tract is free, shall be published for a term of twenty days on the Bulletin Board of the Agency, the time being reckoned from the day and hour when the publication is posted on the said Board to the same hour of the corresponding closing day, without counting Sundays nor days of national rejoicing or mourning.

NOTE ..See Commentary under Art. 146 of the Law for an enumeration of the national feast-days and days of mourning.

CHAPTER III.

Opposing Claims.

Art. 37. Only during the term of ninety days reckoned from the date of the publication of the abstract shall any opposition based on one of the grounds indicated in sections I and II of Art. 37 of the Law, be admissible.

Art. 38. The Agent, upon receipt of an opposing claim, shall notify the denouncer by means of a notice posted during ten consecutive days on the Bulletin Board in which notice the names of the opposing claimant and the applicant and the file number of the record shall appear. The fact that this publication has been made shall be noted on the said record, to which a copy of the original text of the notice posted up shall be added.

Art. 39. On the same day on which the Agent receives the report and plans of the expert he shall cite the parties in interest to a meeting to be held within the succeeding fifteen days. The said citation shall be made by means of a communication sent by mail under registered cover and shall furthermore be published on the Bulletin Board for three consecutive days. The registration receipt and the original of the notice shall be attached to the record.

At the meeting the Agent shall endeavor to bring the parties to an agreement in order to avoid judicial proceedings. These proceedings shall be all noted in the record.

Art. 40. If when the meeting takes place the parties should not be reconciled nor decide to adopt administrative channels, the Agent shall forward to the tribunals the record within the time fixed in Art. 40 of the Law.

Art. 41. In those cases where the record has already been remitted to the courts before the lapse of the ninety days referred to in Art. 37, a new opposing claim is filed based upon one of the grounds specified in Art. 37 of the Law, the Agent shall not admit such new claim, and shall inform the opposing claimant that he must have re-

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course to the courts for the vindication of his rights. If the opposing claim is based upon grounds distinct from those set forth in the aforesaid Art. 37, the Agent shall reserve such claim for addition to the proper record when the latter is received by him from the courts.

Art. 42. If at the meeting the interested parties should decide to adopt administrative channels the corresponding document will be drawn up and signed by them and the process shall be continued until completion of the legal period indicated in Art. 21.

Art. 43. When the Department of Fomento declares that the opposing claim grounded on any of the causes referred to in Art. 43 of the Law is taken into consideration, it shall order that it be filed in the Agency just as in the case of opposing claims covered by Art. 37 of the same Law.

Art. 44. In the determination of an opposing claim, in the event that the parties should select the administrative form of trial, in accordance with Art. 41 of the Law, the Department of Fomento shall be absolutely free to direct the conduct of whatever proceedings it may deem expedient to guide its judgment; and after hearing both parties, who shall be at liberty to submit whatever may suit their interests, shall determine what it may deem just.

CHAPTER IV.

Applications relative to the reduction of denuncements, rectification, reduction and division of mining properties, establishments of easements, authorization of means of transport, explorations, expropriations and permits to foreigners.

Art. 45. Application for the reduction of a denouncement in progress shall be published during twenty days on the Bulletin Board of the Agency, and once only within that same period in the Official Journal of the proper State, Territory or Federal District, and the interested party shall file, before the expiration of the one hundred and twenty days of the process of the record in the Agency, one copy of the newspaper in which the publication has been made at his expense.

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If, at the time of the application for the reduction, the expert shall not have presented the drawings, the Agent shall notify him to make the new surveys and file his reports and drawings within the time still available of the term of sixty days referred to in Art. 21.

In case the drawings have been presented at the time of the application for the reduction, the Agent shall commission the same expert, if this be possible, and if not, he shall appoint some other expert to make the new surveys and to submit his report and drawings within the time still available of the said term of sixty days.

At the expiration of the twenty days of publication on the Bulletin Board, the Agent shall admit denouncements of the excess free ground.

Art. 46. In the case of the reduction of pertenencias of a mining tract under title, referred to in Art. 52 of the Law, the appointment of the expert and the delivery by the latter of the report and related plans shall be made in accordance with the provisions of Arts. 18, 19, 20 and 21. Upon receipt of the expert's documents by the Agent, the latter shall forward a copy of the record to the Department of Fomento, within a term of fifteen days, attaching to the said copy the title-deed and related plan, as also the other records referred to in Art. 45 of the Law.

Art. 47. In the case of the correction of a mining tract under title, referred to in Art. 53 of the Law, the proceedings shall be the same as for a new denouncement, and the monuments shall be located in accordance with the provisions of Art. 32.

Upon the termination of the proceedings, the Agent shall forward a copy of the record to the Department of Fomento, and when approved, the latter shall direct the Agent to deliver to the party in interest the certified copy of the proceedings, to be attached to his title-deed.

Art. 48. Applications relative to the cases of correction of mining tracts under title, referred to in Arts. 54 and 55 of the Law, shall undergo the same process as for a new denouncement.

Art. 49. Applications relative to the division of a mining property into two or more properties shall be addressed to the Department of Fomento, either directly or through the proper Mining Agent, with as many plans in quadruplicate as may be necessitated by the division. The latter shall be accompanied by a report rendered by a graduate expert, or failing such by a practical expert of recognized capacity. The drawings shall be certified by the expert. The party in interest shall forward at the same time both the documents and other records men-

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tioned in Art. 50 and the stamps needed for the issue of the new title-deeds. Upon the approval of the plans by the aforesaid Department, the latter shall set, in accordance with Art. 32, a reasonable term for the erection of the monuments destined to mark on the ground the perimeters of the new properties, subject to the condition that if the party in interest fails to comply with this requirement, he shall be held to have withdrawn his application.

Art. 50. The following documents shall be attached to petitions for the reduction, correction or division of a mining tract under title.

I. The title-deed, together with the related plan of the said property.

II. The certificate to the effect that payment of the Federal tax on mining property has been made up to date on the mine.

III. The documents furnishing proof that the applicant is the owner of the property, or that he is lawfully authorized by the said owner to make the application.

IV. In the case of reduction, it shall be necessary, furthermore, to exhibit the certificate showing that the property is unencumbered, or to file a legal document proving the consent of the mortgage creditors to the making of the reduction.

Art. 51. Applications for the creation of easements to be made to the Department of Fomento, in accordance with the provisions of Art. 72 of the Law, shall be accompanied by a report rendered by a graduate expert, and failing the latter by a practical expert of recognized capacity. The purpose of this report shall be to justify the necessity and the extent of the easements.

Upon the presentation of the application, the owner of the property to be burdened shall be cited by an official communication and shall be warned that in case he fails to appear on the day of the citation, the proper ruling will be made in the matter.

When the owner of the servient estate shall have been heard, or the day set for the hearing shall have passed by without his appearance at the same, the Department of Fomento, after such proceedings shall have been had as the latter may deem expedient, shall render its decision in the matter.

Art. 52. The Department of Fomento shall authorize, in every instance, the means of transportation that it may deem expedient in cases where the application is made for the creation of the easement of passage referred to in Art. 63 of the Law. The parties in interest shall attach to the application such expert reports and plans

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as they may deem appropriate, and shall forward to the aforesaid Department such data as the latter may deem necessary.

Art. 53. Applications relative to exploration permits shall be filed in duplicate with a certificate issued by a graduate expert to the effect that no mining operations have been conducted within the zone of exploration, and that the boundaries of the said zone lie at least at two hundred meters from the boundaries of the nearest mining property.

The Agent shall return to the party in interest the duplicate of his application after recording on it the day and hour of its presentation.

Art. 54. If an exploration is to be conducted on ground of private ownership, the explorer shall apply for the proper permission from the owner or his representative. In the event of its being granted by one of the latter, there shall be furnished to the explorer the proper certificate, which shall be filed by the latter with the Mining Agent that he may take due note of and return the same to the explorer. The explorer shall prove that the person granting him the permit is the owner of the land.

Art. 55. If the explorer shall fail to obtain the permit from the owner or his representative, he shall make application for the same to the Mining Agent, stating in his application the domicile of the owner and the name of the surety proposed for the loss and damage which may be caused by the exploration operations. The Agent shall post the application on the Bulletin Board for the term of fifteen days, and shall inform the owner of such application by means of an official communication warning him that if he fails to take any action he will be held to concur. Upon the expiration of the term set for the publication, the Mining Agent shall set another term of thirty days for the execution and the acceptance or rejection of the bond, which he shall do under his own responsibility. Upon the execution of the bond, the Agent shall issue to the explorer the proper permit, in which he shall set forth the location of the zone and the fixed point serving as center of the same.

Art. 56. The Agent shall publish on the Bulletin Board for the term of thirty days an abstract of the permit, containing the name of the explorer, the fixed point of easy identification serving as center of the zone of exploration, the location of the latter and the day of commencement and of termination of the term referred to in section IV of Art. 124 of the Law.

In all cases of exploration the Agent shall set forth

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in the permit or in the record of the notice, that the exploration operations shall be conducted subject strictly to the provisions relating thereto of the Mining Police Regulations.

Art. 57. The application for expropriation, referred to in Art. 87 of the Law, may be filed with the Department of Fomento either directly or through the proper Mining Agent, and shall be accompanied by a report rendered by a graduate expert, or failing such in the locality, by a practical expert of recognized capacity, and by the necessary related plans certified by the aforesaid expert, in order that the Department of Fomento, in the presence of all the data in the case and after hearing the owner of the ground, shall issue the corresponding decision.

Art. 58. The publication referred to in Art. 95 of the Law shall be made for a term of thirty days on the Bulletin Board of the Agency and in the official journal of the Federation ("Diario Oficial.")

Art. 59. The applications relative to permits granted to foreigners, referred to in Art. 138 of the Law, shall be addressed to the Department of Fomento, either directly or through the proper Mining Agent, at the time of filing the denouncement or within the sixty days following the admission of the same.

The said permits shall be granted under the condition, which condition shall be set forth in the same, that the mining properties are subject in everything to the Mexican laws, and it shall not be permissible to plead in respect of the same any right of foreign status; the courts of the Republic alone being competent to determine any question which may arise in respect of such properties, to the exclusion of all foreign intervention.

SCHEDULE FOR THE PAYMENT OF FEES OF AGENTS OF THE DEPARTMENT OF FOMENTO IN THE MINING BUREAU.

Art. 1. Upon the filing of a notice of exploration of lands of private ownership accompanied by the permit of the owner of the said land, or upon making application for a permit for the exploration of national lands, four pesos shall be paid for all the related proceedings; but if application is made at the Agency for the necessary permission in the event that the owner of the ground refuses to grant the same, eight pesos shall be paid for the related proceedings.

Art. 2. For the entire proceedings on a denouncement, including the copy of the record, up to the delivery

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of the related title-deed, provided that during the proceedings there arises no incident of reduction of pertenencias or of opposition, the fees indicated below shall be paid in the following order:

I. Two pesos at the time of the filing of the denouncement, when the latter is recorded.

II. Ten pesos for the acceptance (sic) of the denouncement by the Agent.

III. Eighteen pesos upon the receipt by the denouncer of the copy of the abstract of the application for publication.

Art. 3. For the proceedings caused by an application for reduction of pertenencias of a denouncement in progress, eight pesos upon the filing of the said application.

Art. 4. For the entire proceedings on an application for correction of a mining property under title, in any of the cases mentioned in Arts. 53, 54 and 55 of the Law, provided that during the said proceedings no incident of opposition arises, and up to the delivery of the new title-deed or the copy of the record to be attached to the related title-deed, the fees indicated below shall be paid in the following order:

I. Ten pesos at the time of the filing of the application.

II. Eighteen pesos upon the receipt by the applicant of the copy of the abstract of the application for publication.

Art. 5. For the proceedings on an application for division of a mining property, up to the delivery of the title-deeds of the new properties, five pesos shall be paid upon the presentation of the application.

Art. 6. For all the proceedings relative to a reduction of pertenencias of a mining property under title, ten pesos, which shall be paid upon the filing of the application.

Art. 7. For all the proceedings relative to applications for expropriation or easement, where the Agent intervenes in the same, there shall be paid in each case five pesos upon the presentation of the application.

Art. 8. In case of opposition to a denouncement, the denouncer shall pay for the proceedings before the Agency ten pesos at the time of holding the conciliatory meeting, without prejudice to his right to make claim for payment of the said amount by the opposing party in the related suit.

Art. 9. For the copy of final judgments rendered in suits adversing denouncements of mining properties, which copy shall be included in that of the related record

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which the Agent forwards to the Department of Fomento, at the rate of two pesos for each folio or fraction thereof.

Art. 10. For the collation and certification of plans, two pesos.

For a certified copy of the expert's report, as also of all manner of documents issued by Mining Agents at the request of the parties in interest, at the rate of two pesos per folio or fraction thereof.

For taking note of any document, one peso.

Art. 11. For a search of records or other documents in the archives, one peso.

When the party in interest fails to furnish sufficient data and search has to be made through documents corresponding to more than one year, one peso for each year searched.

Art. 12. Agents shall be entitled to receive only the fees fixed in this schedule, and shall consult the Department of Fomento in regard to the amount of the fees to be charged in cases not provided for in the schedule.

Art. 13. When the proceedings in a case are interrupted for any reason not chargeable to the Agent, fees which the latter shall have received shall not be returned by him.

Art. 14. If it should be necessary, owing to irregularities committed by Mining Agents, to reinstate the proceedings in a case, such reinstatement shall be carried into effect at the cost of the said Agents, who, in consequence, shall have no right to collect fresh fees for same.

PART FOUR.

MINING TAX LAW OF 1892.

Art. 1. Pursuant to the provisions contained in the related articles of the new Mining Law (Law of 1892), there is hereby established a Federal tax on mining property, consisting of two parts: the one payable once only, in stamps to be affixed to each mining title, and the other payable annually on each pertenencia embraced in a concession. For the purposes of the tax, the mining pertenencia or unit of concession shall be that established in Art. 14 of the new Mining Law. (Law of 1892). Accordingly, both old and new pertenencias of all mines existing in the Republic whatever be their extent, shall be appraised in the units indicated.

For fractions of pertenencias amounting to or exceeding one half of one pertenencia, the tax shall be paid as for an entire pertenencia, and nothing shall be paid for any fraction of a pertenencia not amounting to one half.

REFERENCES. The Article fourteen referred to corresponds to Art. 4 of the New Mining Law of 1909.

In regard to the last clause of the above Article, see the closing words of the first paragraph of Art. 6 of the Mining Law.

This Mining Tax Law and its Regulations are still in force. See Transitory Article 9 of the new Mining Law.

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Arts. 2 and 3, and the first two paragraphs of Art. 4. (The provisions of these Articles are omitted here because either transitory in character or repealed by the provisions of Articles 9 and 10 of the Law on Mining Taxes and Franchises of March 25, 1905, as given below.)

Law of March 25, 1905.

Art. 9. The value of the special stamps which, pursuant to the laws in force, are affixed to the title-deeds of mines, shall be five pesos for each pertenencia covered by the said title-deeds, whatever may be the mineral substances to be mined.

REFERENCES. Mining Agents are prohibited, under circulars of the Department of Fomento of April 12, 1893, and September 1, 1897, from accepting deposits of money or stamps to cover mining taxes not yet due.

A ruling of the Department of Fomento of June 5, 1905, directs Agents to give preference to an application which is accompanied by the certificate of deposit of the value of the stamps which the law requires to be affixed to the title-deed, as against another application for the same mine, filed previously or simultaneously, but unaccompanied by such certificate. Compare Arts. 16 and 34 of the Mining Law.

Law of March 25, 1905.

Art. 10. The annual tax on mining properties shall be payable as follows:

A. The amount of the tax shall be six pesos per annum on each mining pertenencia, that is, two pesos for each period of four months, whatever may be the substances mined.

B. If the number of pertenencias of the same mining enterprise is in excess of twenty five and all such pertenencias are contiguous, the rate of six pesos shall be paid on the first twenty-five pertenencias, and such rate shall be re-

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duced to three pesos on each one of the pertenencias in excess of twenty-five.

REFERENCES. In the application of the above Article, the circulars issued by the Department of the Treasury on April 26, 1905, and October 4, 1907, respectively, are of interest. They are given in full below.

Circular of the Department of the Treasury of April 26, 1905.—In the application of the amendments introduced in the law on mining taxes by Art. 10 of the Decree of March 25 last, the President of the Republic has seen fit to direct that when the pertenencias of the same mining enterprise are covered by a single title-deed, the tax shall be collected at the rate of six pesos on the first twenty-five pertenencias and at the rate of three pesos on the rest; and that when the property of an enterprise consists of several mines, each covered by a separate title-deed, the tax shall be collected at the rate of six pesos for each mining property if the area of the property does not exceed twenty-five pertenencias, or in the manner aforesaid if the area is greater, but always rating each property separately; without prejudice to the right of the parties in interest to have recourse to this Department to prove, for the purposes of the tax, that the pertenencias covered by different title-deeds are nevertheless contiguous; and in such cases, you will be advised in due course of the rulings issued.

Circular of the Treasury Department of October 4, 1907.—Art. 7 of the Law of June 6, 1892, provides that, when the owner of a mine transfers the same he shall give the proper notice for the notation in the Register of Mining Property; and as the tax created by the said law was uniform, irrespective of the number of pertenencias, Art. 26 of the Regulations of June 30 of the same Law did not require that notice of the transfer of a mine be accompanied by the evidence of such transfer, for the reason that the Treasury was not interested in the question of whether the transfer was real and effective, since the mining tax can, under the Law of June 4 of 1892, be paid by a person other than the owner of the mine.

But, as Art. 10, section B, of the Law of March 25 of 1905, grants mining enterprises the right to pay at only half the ordinary rate of six pesos established in section A of the aforesaid article on their mining pertenencias in excess of twenty-five, provided that all such pertenencias are contiguous, it is evident that it becomes necessary to ascertain whether the transfer of any mine, of which notice is given for the purposes of Art. 7 of the afore-

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said Law of June 6 of 1892, is real and effective, since otherwise it would be easy to elude payment of the tax on mining property, by means of a false statement made by the owner of a mine to the effect that he had transferred his ownership therein to another party, to the end that, as the latter would appear in the Register of Mining Property as owner of a number of contiguous pertenencias in excess of twenty-five, there should be paid taxes on such excess at the rate established in section B of Art. 10 of the aforesaid Law of March 25, 1905.

In view of the considerations above detailed, the President of the Republic has seen fit to issue the following provisions respecting the operation of Art. 7 of the Law of June 6, 1892.

I. The notices of transfer given by the owner of a mine shall be accompanied by the original instrument evidencing the same transfer duly recorded in the public register of the district in which the real estate is situated; or by a certificate of registration issued by the person in charge of the public Register.

II. When the party transferring the mine is unable to present with his statement the documents referred to in the preceding paragraph, no notation shall be made of the transfer in the Register of Mining Property, until the party acquiring the mine presents the aforesaid documents.

III. The notices referred to in the preceding provisions may be presented to the Principal Stamp Office directly or through the branch offices or Agencies; or to the Department of the Treasury. In those cases where the notices are filed with the Principal Stamp Offices, the latter shall not at once make the notation of the transfer, but shall transmit the documents to the Department of the Treasury, so that the latter may examine them and make the proper ruling in the case.

Law of March 25, 1905.

Art. 11. Applications for the concession of mining pertenencias or of demasias shall not produce legal effects, nor be set in motion, unless accompanied by the certificate issued by the local Revenue office, accrediting the deposit in the said office of the amount of the title tax, according to the number of mining pertenencias embraced in the applications. The said certificate

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of deposit shall be returned to the parties in interest as soon as the corresponding stamps have been cancelled on the title-deeds of the mine under consideration or the denouncement has been definitively rejected.

REFERENCES. Compare Arts. 16 and 34 of the Mining Law.

Art. 4, Paragraph 3. The Federal tax established in Art. 1, consisting of the annual payment on pertenencias and the stamps to be affixed to the title-deed, shall be paid on all mining properties except such as are expressly exempt from such taxes under a contract made with the executive by virtue of authority conferred by the legislative power, or approved by the latter, and such exemption shall last only for the period stipulated in the contract and shall not be renewed.

Art. 5. The annual tax on mining property shall be paid in advance, in three equal instalments, each fiscal year, payment being made during the first month of each period of four months, in such Offices of the Treasury as may be designated in the Regulations of this Law, and the parties in interest shall present themselves punctually in the said Offices to make the aforesaid payment, without need of notice or other requisite whatsoever on which a delay or excuse for non-payment might be grounded.

Art. 6, Paragraphs 1 and 2. (The provisions contained in these paragraphs are omitted here because transitory in character.)

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Art. 6, Paragraph 3. Any owner of a mine who fails to pay the annual property tax during the first month of each quadrimester shall suffer a fine equal to fifty per centum of the amount of the tax, provided payment be made during the second month; if payment be made during the third month, the fine shall be equal to the amount of the tax. Upon the expiration of the last named term without payment of the tax and surcharges, the property shall be forfeited without any recourse whatsoever, and it shall be so declared by the Department of the Treasury and published in the *Diario Oficial*, to the end that any other person may make application for the said property.

Art. 7. When the owner of a mine transfers the same, he shall give proper notice of such transfer for notation in the Register, and the stamps required by the Stamp Law shall be affixed to the deed of sale.

REFERENCES. See circular of the Department of the Treasury of October 4, 1907, above, and Art. 26 of the Regulations appended to this Law.

Art. 8. In the event that any person or company does not desire to continue the operation of any mines owned by such person or company, the latter shall give notice in writing to the proper Treasury Office, so that the tax may be liquidated up to the date of the notice and the proper notation made in the Register.

REFERENCES. See Art. 27 of the Regulations below.

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Tax on Title-Deeds.

(The first sixteen Articles of the Regulations are omitted here because their provisions are either transitory in character or superseded by later legislation, as set forth in the preceding pages.)

Annual Tax.

Art. 17. The annual tax referred to in Art. 4 of the Law shall be collected by the Offices of Stamp Revenues pursuant to the Laws of March 31, 1887, December 9, 1891, and other laws in force, and shall be paid in internal revenue stamps, which shall bear the legend "Impuesto Minero" (Mining Tax) printed diagonally across the same.

Art. 18. The Collectors in Chief of stamp revenues shall receive, as sole compensation, two per centum of the gross receipts from the sale of stamps for the annual mining tax.

Art. 19. The Collectors in Chief of stamp revenues shall keep a register of the mines situated in their respective jurisdictions, containing the data furnished to them by the Department of the Treasury.

Art. 20. The owners or possessors of mines shall make payment of the tax in the proper Principal or Branch Stamp Office; but the Department of the Treasury is empowered to modify this rule where it deems a modification is equitable and expedient, notifying the General Office so that it may in turn notify the Principal Revenue Office in whose district the mine lies.

Art. 21. The Collectors in Chief of Stamp Revenues shall see that the Branch Office or Agency transmits to them, in due course, the stubs of the stamps sold for each mine, the same being affixed to sheets of paper on which shall be stated, respectively, for which mine the stamps were sold and whether the sale corresponds to the area set forth in the title-deeds and indicated in the duplicate of the same.

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Immediately the Collectors in Chief receive the said sheet, they shall transmit the same to the Department of the Treasury, to which latter they shall forward at the end of each fiscal year the records of such sheets, corresponding to each mining enterprise.

Art. 22. The three quadrimestral payments referred to in Art. 5 of the Law shall be made before July 31, November 30 and March 31, respectively, of each year. To this end the proper Principal or Branch Stamp Office shall deliver to each party in interest a manifest containing the following:

I. The words "Impuesto Minero" (Mining Tax) as a heading.

II. The name of the State and of the Municipality in which the Office issuing said manifest belongs.

III. The name of the mine, the number of mining pertenencias upon which the tax is to be paid, the Municipality in which the mine is situated, the name of the party, company or organization in possession of the same, and the ordinal number of the register of the title-deed.

IV. The amount of the tax to be paid every four months.

V. Three columns in blank, in which shall be affixed the stamps corresponding to each period of four months, the said stamps to be properly cancelled. The parties in interest shall see that the manifest referred to in this Article, with the stamps evidencing the payment of the tax affixed thereto, is posted in some conspicuous place in the Office of the mining concern.

Art. 23. Immediately any quadrimestral payment falls due under the provisions of the preceding article, and the Principal Stamp Revenue Office receives notice of the failure to make such payment, said office shall communicate the fact to the Agent of Fomento, so that the latter may post, for the period of one month, a notice on the Bulletin Board referred to in Art. 21 of the Regulations of June 25, 1892, which notice shall have, respecting the creditors of mines, the effects of citation indicated in Art. 25 of the Law of the fourth instant. The said creditors shall not be empowered to make the payment of the tax until the aforesaid notice is posted on the Bulletin Board of the Agency of Fomento.

References. See Art. 145 of the new Mining Law of 1909.

Art. 24. If there exists within the district of the Principal Stamp Office no Agency of Fomento, to which the notice referred to in the preceding Article can be

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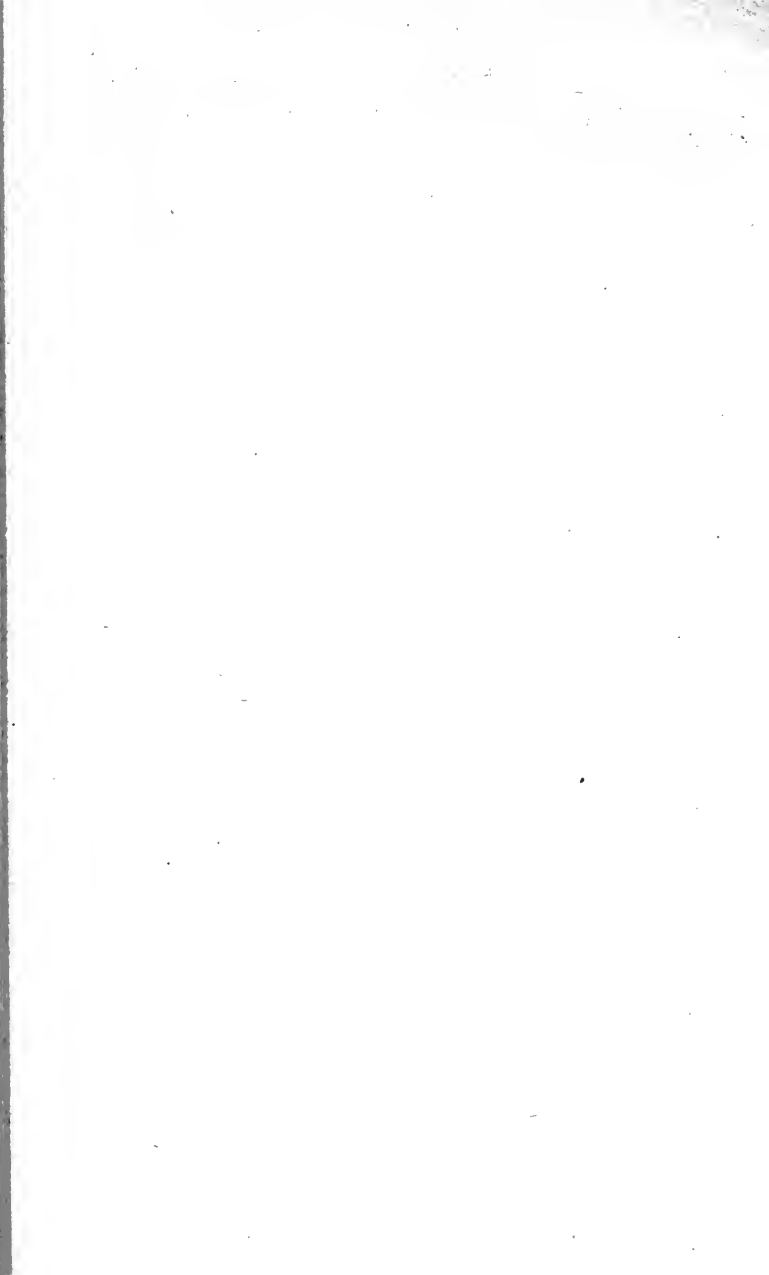
given, the said Principal Office shall notify the creditors of mines through the proper District Court, ascertaining first from the proper Commercial Register who the creditors are.

Art. 25. Upon the expiration of the term set forth in the last paragraph of Art. 6 of the Law without payment of the tax, the Principal Offices of Stamp Revenues shall immediately notify the Department of the Treasury, so that the latter may declare forthwith the forfeiture of the property, and that the Department of Fomento may dispose of the mine. The declaration referred to shall be published in the "Diario Oficial."

Art. 26. The notice referred to in Art. 7 of the Law shall be given in writing by the party in interest to the Principal Office of Stamp Revenues through the proper Branch Office or Agency. The Principal Office shall notify the Department of the Treasury in order that the proper notation may be made in the Register.

Art. 27. The notices referred to in Art. 8 of the Law shall also be given in the manner provided in the preceding article. The Principal Office shall communicate the said notices to the Department of the Treasury, in order that the latter may make the notation in the Register and the proper publications of notices in the "Diario Oficial," as also the proper liquidation, which last the aforesaid Department shall communicate to the proper Principal Office, to the end that the latter may return to the applicant whatever may be due him.

Art. 28. (The provisions of this Article are omitted here because of temporary application only.)



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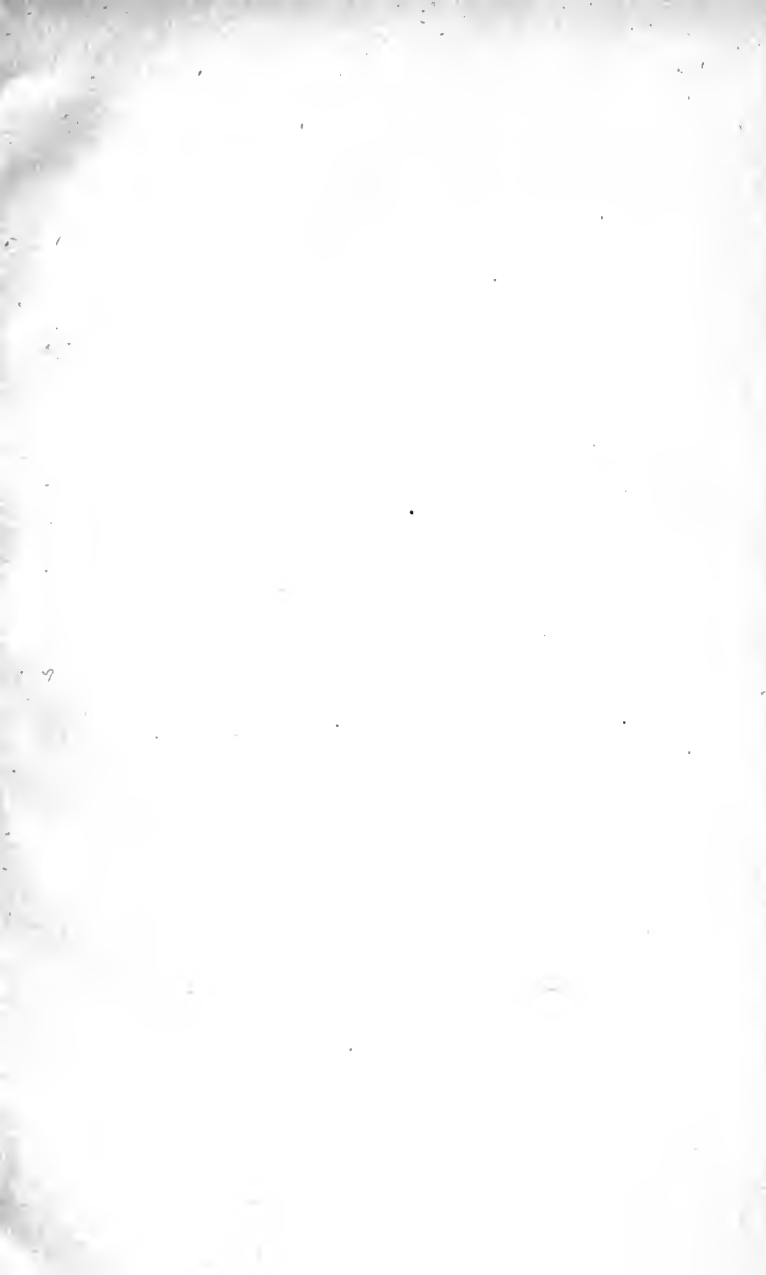
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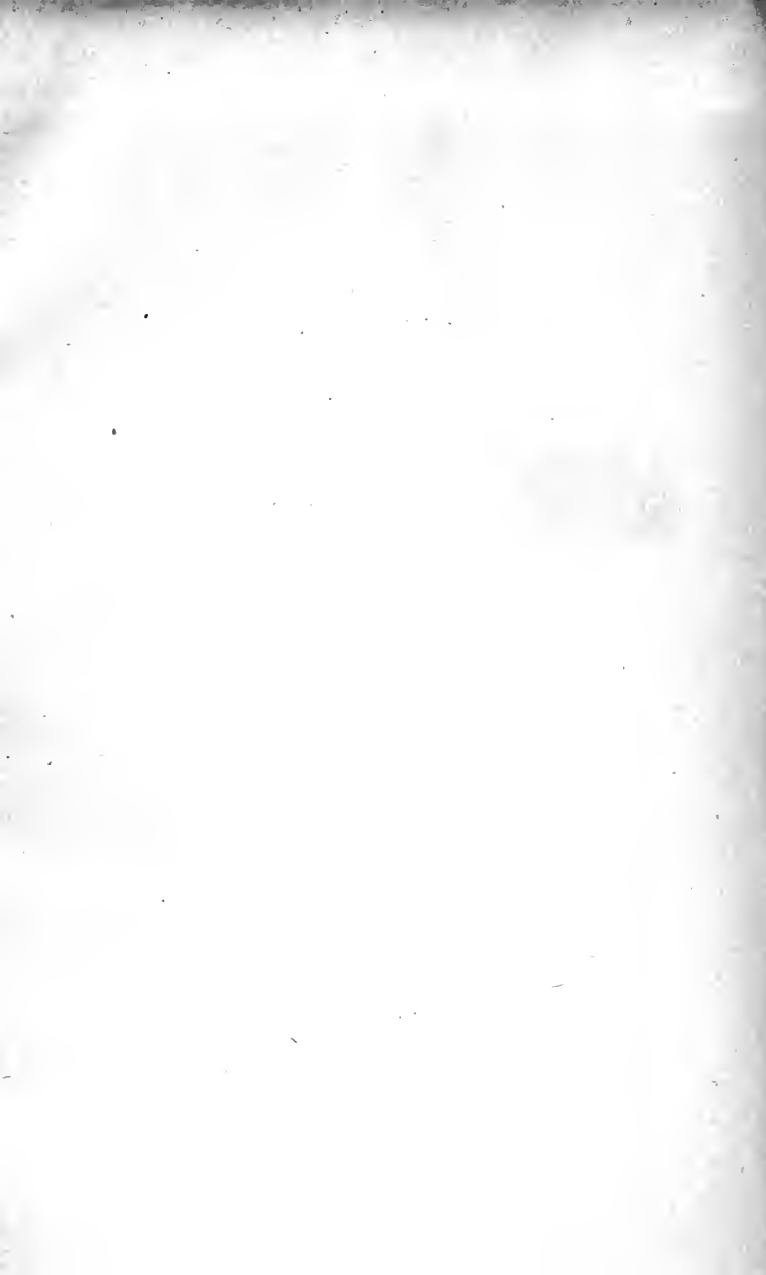
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